

OFFICE OF ADMINISTRATIVE HEARINGS
SPECIAL EDUCATION DIVISION
STATE OF CALIFORNIA

SPECIAL EDUCATION ADVISORY COMMITTEE MEETING

OCTOBER 14, 2011
10:00 A.M. - 1:00 P.M.

JOINT SESSION

LOS ANGELES, CALIFORNIA
SACRAMENTO, CALIFORNIA

Official Transcriber: Stacy Wegner

COMMITTEE MEMBERS PRESENT:**NORTHERN CALIFORNIA**

TRACI BEAN
MARGARET BROUSSARD
FRAN ENGLISH
JESSE LEAVITT
KENT REZOWALLI, CHAIRPERSON
CATHERINE SHERMAN, NOTE TAKER

SOUTHERN CALIFORNIA

MARGARET DALTON
AMY FOODY
MAUREEN GRAVES
MARCY GUTIERREZ
MIHO MURAI, NOTE TAKER
ROBERT WRIGHT, CHAIRPERSON

COMMITTEE MEMBERS NOT PRESENT:

PAUL EISENBERG
SUNDEE JOHNSON
ANN DELFOSSE
THOMAS GIBSON
CHRISTINE SMITH

ALSO PRESENT:

JUDGE JUDITH KOPEK, Administrative Law Judge
JUDGE MICHAEL BARTH
JUDGE RICHARD BREEN
JUDGE TIM NEWLOVE
KAY STUBBINGS

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P R O C E E D I N G S

ADMINISTRATIVE LAW JUDGE KOPEK: Well, good morning everybody. This is the meeting of the Office of Administrative Hearings Special Education Advisory Committee. It's October 14th, 2011, and it is just about 10:15 a.m. I am presiding Administrative Law Judge Judith Kopek, head of the Special Education Division for the Office of Administrative Hearings, and I'd like to welcome all of our members, new and returning in Northern California, along with Southern California.

This meeting is being conducted jointly through video conference. We will be following the same agenda, and this meeting is also be webcast, and so I would like to welcome all those of you who are attending this meeting through our webcast.

At this time, since we do have some new members, what I would like to do is just go over the mission of the Advisory Committee and the goal as well.

And the Advisory Committee is composed of parents, attorneys, advocates, school employees and other stakeholders, the majority of whom are parents and advocates or attorneys for parents. The Advisory Committee provides nonbinding recommendations to the Office of Administrative Hearings to improve the mediation and due process procedures utilized by the Office of Administrative Hearings.

1 And the goal is that OAH consults with the Advisory
2 Committee in areas, such as revisions to the OAH website, the
3 forms, documents, scheduling procedures, staff trainings,
4 procedure manual, consumer brochure and outreach to families
5 and students.

6 And what we historically have done is selected --
7 the Advisory Committee in each location has selected a chair,
8 and the purpose of the chair is to help facilitate the
9 meeting in Northern California. The chair will be given the
10 comments as they come through the website, and at each item
11 the chair will read those public comments pertaining to the
12 item.

13 In Southern California I -- the purpose -- the
14 chair is very helpful to make sure that those members of the
15 Committee and then during public comment time the members of
16 the public are able to participate, and that if they are not
17 recognized that you let us know and we'll try to have -- make
18 sure that everybody in both locations can participate.

19 So at this time I'd like to have the members select
20 a representative from Southern California. Is there anyone
21 who would like to volunteer?

22 **MR. WRIGHT:** Want me to do it? I'll volunteer.

23 **ADMINISTRATIVE LAW JUDGE KOPEK:** Okay. And your
24 name?

25 **MR. WRIGHT:** Right. Robert Wright.

1 **ADMINISTRATIVE LAW JUDGE KOPEK:** Okay. Mr. Wright.
2 And how about in Northern California?

3 **MR. REZOWALLI:** I did it last time. I'd be more
4 willing to do it again if no one wants to.

5 **UNIDENTIFIED SPEAKER:** I think Kent is a great
6 choice.

7 **ADMINISTRATIVE LAW JUDGE KOPEK:** Okay. Good
8 choice. That's Mr. Kent Rezowalli.

9 And also, I should indicate that it is also helpful
10 for me for the chair of each location to take notes. They do
11 not need to be verbatim notes, but I rely on the notes of the
12 Advisory Committee members when I put together the summary
13 that is then posted on the website.

14 **MR. REZOWALLI:** I (inaudible) prepared to take
15 notes.

16 **ADMINISTRATIVE LAW JUDGE KOPEK:** So at the
17 conclusion of the meeting, I'll give you a target date by
18 which you can get the notes to me, the notes (inaudible) to
19 prepare the summary. Okay. I'd like to thank both of you
20 for volunteering.

21 I guess I should ask is there any objection in
22 Southern California to have Mr. Wright participate as the
23 chair? All in favor for Mr. Wright please say aye.

24 **UNIDENTIFIED SPEAKER:** Aye.

25 **UNIDENTIFIED SPEAKER:** Aye.

1 **UNIDENTIFIED SPEAKER:** Aye.

2 **ADMINISTRATIVE LAW JUDGE KOPEK:** And opposed?

3 Okay. That's unanimous. And how about Northern California?

4 All in favor --

5 **UNIDENTIFIED SPEAKER:** Aye.

6 **UNIDENTIFIED SPEAKER:** Aye.

7 **ADMINISTRATIVE LAW JUDGE KOPEK:** -- of Mr.

8 Rezowalli say aye.

9 **UNIDENTIFIED SPEAKER:** Aye.

10 **UNIDENTIFIED SPEAKER:** Aye.

11 **ADMINISTRATIVE LAW JUDGE KOPEK:** And opposed?

12 Okay. Unanimous as well.

13 Well, actually I -- in my discussion of the chair I

14 got a little confused that we do have a separate note taker

15 for each Committee. I should have taken the cue from Mr.

16 Rezowalli when he was expressing surprise that I was giving

17 him --

18 **MR. REZOWALLI:** (Overlapping).

19 **ADMINISTRATIVE LAW JUDGE KOPEK:** -- both of those

20 tasks. So the -- we would like to have a note taker for each

21 location. And let's start with Southern California. Is

22 there someone who would --

23 **MS. MURAI:** I'll take the notes again.

24 **ADMINISTRATIVE LAW JUDGE KOPEK:** Okay. And that's

25 --

1 **MS. MURAI:** This is Miho Murai.

2 **ADMINISTRATIVE LAW JUDGE KOPEK:** Okay.

3 **MS. MURAI:** I'll take the notes again.

4 **ADMINISTRATIVE LAW JUDGE KOPEK:** Is there any
5 objection? All in favor say aye?

6 **UNIDENTIFIED SPEAKER:** Aye.

7 **UNIDENTIFIED SPEAKER:** Aye.

8 **UNIDENTIFIED SPEAKER:** Aye.

9 **UNIDENTIFIED SPEAKER:** Aye.

10 **ADMINISTRATIVE LAW JUDGE KOPEK:** Opposed?

11 Terrific. Ms. Murai, you'll be the note taker. And how
12 about in northern California?

13 **UNIDENTIFIED SPEAKER:** So you didn't like doing it
14 last year, Peggy? I'm looking at who it was last year.

15 **ADMINISTRATIVE LAW JUDGE KOPEK:** Last meeting Ms.
16 Broussard was very -- was a very good note taker, but she's -
17 - I think we should give someone else a chance, another
18 opportunity to take notes.

19 **MS. SHERMAN:** I don't -- if I had a note pad or
20 something, I would take notes.

21 **ADMINISTRATIVE LAW JUDGE KOPEK:** Okay.

22 **MS. SHERMAN:** Thank you. I will be happy to take
23 notes.

24 **ADMINISTRATIVE LAW JUDGE KOPEK:** Okay. Ms.
25 Sherman, thank you very much. All in favor.

1 **UNIDENTIFIED SPEAKER:** Aye.

2 **UNIDENTIFIED SPEAKER:** Aye.

3 **UNIDENTIFIED SPEAKER:** Aye.

4 **ADMINISTRATIVE LAW JUDGE KOPEK:** Anyone opposed?

5 Thank you very much.

6 **MS. SHERMAN:** You're welcome. Thank you.

7 **ADMINISTRATIVE LAW JUDGE KOPEK:** Okay. At this
8 time let us introduce the members in each location. And what
9 would be helpful is if you would indicate whether you are a
10 veteran returning member or new member. And then it may also
11 be helpful if you would indicate what your -- what your
12 connections, personal or professional, is to special
13 education or your interest in service on the Committee.

14 And let us start with Los Angeles. Mr. Wright?

15 **MR. WRIGHT:** Bob Wright. I am a parent, and I have
16 a son that's a special needs child.

17 **ADMINISTRATIVE LAW JUDGE KOPEK:** And you are a
18 returning member?

19 **MR. WRIGHT:** Oh, three -- yes.

20 **ADMINISTRATIVE LAW JUDGE KOPEK:** Okay.

21 **MR. WRIGHT:** This is my third meeting, yes.

22 **ADMINISTRATIVE LAW JUDGE KOPEK:** Okay. Terrific.
23 Welcome.

24 **MS. FOODY:** I'm Amy Foody. I am a new member. I
25 am a special education educator and administrator as well as

1 a parent.

2 **ADMINISTRATIVE LAW JUDGE KOPEK:** And you are one of
3 our new members?

4 **MS. FOODY:** I am a new member, yes.

5 **ADMINISTRATIVE LAW JUDGE KOPEK:** Welcome.

6 **MS. MURAI:** Hi my name is Miho Murai. I'm a
7 returning member. This is my third meeting as well, and I
8 represent students and parent -- students and parents of
9 students with disabilities.

10 **ADMINISTRATIVE LAW JUDGE KOPEK:** Welcome.

11 **MS. GRAVES:** I'm Maureen Graves. I am a lawyer
12 representing students and parents in Orange County. This is
13 my third meeting, and I have 19 year-old twins who have
14 autism, one of whom is still in the school system.

15 **ADMINISTRATIVE LAW JUDGE KOPEK:** Welcome.

16 **MS. DALTON:** I'm Margaret Dalton. I'm a returning
17 member, third meeting as well. I'm director of the legal
18 clinic at University of San Diego, and I supervise the
19 Education and Disability Law Clinic.

20 **ADMINISTRATIVE LAW JUDGE KOPEK:** Welcome to each of
21 you. And here in Sacramento? Actually, Ms. Bean, want to
22 start?

23 **MS. BEAN:** Yeah. I'm Traci Bean, and this is my
24 first meeting. And I am a speech and language pathologist
25 practicing, as well as the regional director for a non-public

1 agency, and I also have one child in special ed.

2 **MR. REZOWALLI:** Kent Rezowalli. I'm the director
3 of the Tri-Valley SELPA. I also have a disabled child.

4 **MS. GUTIERREZ:** My name is Marcy Gutierrez. I'm
5 the new member of the Committee and an attorney who
6 represents the school districts, and I have two children
7 enrolled in public schools.

8 **ADMINISTRATIVE LAW JUDGE KOPEK:** Welcome.

9 **MS. LEAVITT:** Hi. I'm Jesse Leavitt. I am a new
10 member. This is my first meeting, and I am a parent.

11 **ADMINISTRATIVE LAW JUDGE KOPEK:** Welcome.

12 **MS. BROUSSARD:** I'm Margaret Broussard. I'm a
13 returning member. I'm an attorney that represents students
14 and parents, and I'm also the parent of an 18 year-old with
15 special needs.

16 **ADMINISTRATIVE LAW JUDGE KOPEK:** Welcome.

17 **MS. SHERMAN:** I am Catherine Sherman. I am a
18 resource specialist with the Department of Corrections
19 Juvenile Justice, and I'm a parent of special needs children.

20 **ADMINISTRATIVE LAW JUDGE KOPEK:** Welcome.

21 **MS. ENGLISH:** Fran English, special education
22 program supervisor, returning member, and parent of a child
23 with autism.

24 **ADMINISTRATIVE LAW JUDGE KOPEK:** Okay. Welcome.
25 And at this time I'd like to indicate that here in Northern

1 California Thomas Gibson is not here -- is not in attendance.
2 And in Southern California Ann Delfosse, Paul Eisenberg,
3 Christian Smith [sic] and Sundee Johnson are not attending.
4 Okay.

5 The next item would be to have introduction of the
6 Office of Administrative Hearings staff who are attending.
7 And in Sacramento we have Administrative Law Judge Michael
8 Barth, who is getting the comments in from the website, and
9 he will be passing them on to our chair. And also we have
10 Kay Stubbings, who is the executive secretary and the woman
11 who pulls this all together and communicates with each of the
12 members and is responsible for making everything happen
13 today.

14 And in Southern California we have presiding
15 Administrative Law Judge Tim Newlove, who is the presiding
16 judge over the San Diego special education group.

17 And Tim, do you have anybody else there from OAH.

18 JUDGE NEWLOVE: No.

19 **ADMINISTRATIVE LAW JUDGE KOPEK:** Okay. And also
20 attending via webcam is presiding Administrative Law Judge
21 Richard Breen from our Van Nuys office, so he is out there in
22 cyber land as well. Okay.

23 Moving on to section two of the agenda,
24 introductory comments and updates. I'd like to give you a
25 brief overview of how the Advisory Committee process has

1 evolved over the years. I will go through the agenda and
2 make a presentation for each item that was placed on the
3 agenda by the Office of Administrative Hearings for agenda
4 items that were proposed by an Advisory Committee member. I
5 will turn to that member and have him or her then present the
6 item.

7 We will then have discussion among the Advisory
8 Committee members about that item. And I would also then
9 have us take public comments on that particular item, either
10 through the comments through the folks participating on
11 webcam or the members of the public who are attending in each
12 location.

13 The Advisory Committee provides recommendations to
14 OAH on each item, so typically what will happen is as the
15 Advisory Committee members are discussing an item, the
16 comments sometimes will evolve into a recommendation. We
17 then work to clarify what that recommendation is.

18 Although we are not required to follow Robert's
19 Rules of Order, we do ask that each item be seconded. And
20 the purpose of that is to make sure that there is sufficient
21 interest among the Committee members to actually vote on the
22 item. Then we have any additional comment.

23 Sometimes what can happen is there basically in the
24 result of the comment, folks may want to amend the initial
25 recommendations. And again, we just go back to see whether

1 the proposing member would agree to that recommendation or
2 not. If the person agrees to it, then we go forward on the
3 amendment. The amended recommendation, if it's not agreed
4 to, then the member who had that wishes to propose another
5 recommendation that's how we go forward.

6 On the one hand, we try to keep things as informal
7 as possible, and I really want to encourage as much
8 discussion as possible. On the other hand, we do have to
9 have some semblance of order in terms of making clear exactly
10 what the recommendation is and whether there's an amendment
11 and that type of thing, so I may interject from time to time
12 to try to straighten things out. I would encourage the chairs
13 to do the same in terms of straightening things out.

14 And then also, in the past Mr. Rezowalli has served
15 as a sort of an informal keeper of the order, the technical
16 process. And Mr. Rezowalli, if you don't have any
17 objections, I'd like to call upon those services as well.

18 **MR. REZOWALLI:** Okay. Sure.

19 **ADMINISTRATIVE LAW JUDGE KOPEK:** Okay. As much
20 assistance as we have to make sure that the meeting is
21 orderly and everyone knows what's being voted on in
22 particular would be very, very helpful.

23 And then we do -- when we do have the votes, we
24 have separate notes in Northern California and Southern
25 California, and we like to take a roll call so we have a

1 record.

2 And any questions about the process of procedure?

3 **MR. REZOWALLI:** Just a comment or (inaudible).

4 **ADMINISTRATIVE LAW JUDGE KOPEK:** Mr. Rezowalli.

5 **MR. REZOWALLI:** Yes. This is Kent Rezowalli. You
6 have an email come in. It doesn't -- it's not on an agenda
7 item. It's expressing a difficult accessing the website.
8 I'm not sure --

9 **ADMINISTRATIVE LAW JUDGE KOPEK:** Yes, please let us
10 know.

11 **MR. REZOWALLI:** Okay. Would you like that?

12 **ADMINISTRATIVE LAW JUDGE KOPEK:** Sure. Or you want
13 -- yes.

14 **MR. REZOWALLI:** I'll go ahead and read this.

15 **ADMINISTRATIVE LAW JUDGE KOPEK:** Please.

16 **MR. REZOWALLI:** Okay. "Good morning" -- I'm just
17 going to read it directly -- "I'd like to have access of your
18 online meeting via. The webcast or the format that is being
19 used is too difficult to access on Apple computers. I should
20 have this level of difficult" -- I believe it's probably mean
21 I should not have this level of difficulty -- "to access a
22 public meeting as a parent of two special needs children. I
23 feel (inaudible) that is fair to me or my children again. I
24 feel the system that's fair to me or my children." That's
25 it.

1 **ADMINISTRATIVE LAW JUDGE KOPEK:** Liz, is there
2 anything that you can do at this point to --

3 **LIZ:** It's the proposed media plan, so it's not
4 compatible with Apple. And it's -- since we're a state
5 agency, we have to go with the 90 percent is or the 95
6 percent is. She might be able to open it from the link. You
7 know, if you just click the link instead, it might open it,
8 but we encode in Windows media file, so if you wanted to look
9 into encoding in a different way, we'd have to do some
10 research.

11 **ADMINISTRATIVE LAW JUDGE KOPEK:** Okay. Okay.
12 Sure.

13 **MR. REZOWALLI:** Which I presume is not able to the
14 access (inaudible).

15 **ADMINISTRATIVE LAW JUDGE KOPEK:** Okay.

16 **MR. REZOWALLI:** Yeah.

17 **ADMINISTRATIVE LAW JUDGE KOPEK:** Okay. Thank you.
18 Anything further?

19 **MR. WRIGHT:** I had a question.

20 **ADMINISTRATIVE LAW JUDGE KOPEK:** Yes, Mr. Wright.

21 **MR. WRIGHT:** Did we get any agenda items from the
22 Advisory Committee? I wasn't informed or asked to provide
23 any.

24 **ADMINISTRATIVE LAW JUDGE KOPEK:** Mr. Wright, what I
25 would suggest is -- well, is -- if you would like to comment

1 on that during the public comment period, but it's not
2 currently on the agenda.

3 **MR. WRIGHT:** Okay.

4 **ADMINISTRATIVE LAW JUDGE KOPEK:** So what I'd like
5 to do is follow the agenda. Okay. Thank you. Okay.

6 The next item is the Open Meeting Act. We sent to
7 each of the members a document that is called a handy guide
8 to the Bagley-Keene Open Meeting Act 2004 that was prepared
9 by the California Attorney General's Office. This is the
10 most recent copy of this document, but what I attached to it
11 is a copy of the Open Meeting Act that is currently in
12 effect. Although I didn't go --

13 **MR. WRIGHT:** Judge, may I interrupt you? Just Miho
14 has her hand up.

15 **ADMINISTRATIVE LAW JUDGE KOPEK:** Okay.

16 **MS. MURAI:** Yeah. I have a procedural question
17 though. How would we be able to put things on the agenda,
18 because I know last time when we were sent the minutes --
19 when we were sent the agenda, there was a request that we
20 could submit proposals. And I have some issues that I know
21 wants to be discussed today, and you know, I -- since I know
22 that Bob had sent an email asking how we can do that, and I
23 just spoke to him and he said nobody responded.

24 So I would think that since we weren't able to put
25 stuff on the agenda that we can do that now because then we

1 would have to wait until another, you know, eight months.
2 And there are some pending -- you know, there's a lot of --
3 there was a lot of discussions at the last meeting, and I
4 think a lot of those were told to be placed, I think, on
5 here, which I don't see it.

6 So I just -- you know, procedurally we need to
7 know, and I think the public needs to know how, you know --
8 because I feel like for me I -- I represent mainly parents
9 and students in LAUSD and in the LA area. And if they're
10 coming to me with concerns, I want to be able to, you know,
11 share those concerns to the Committee, so I don't know how we
12 can do that.

13 **ADMINISTRATIVE LAW JUDGE KOPEK:** Okay. Well, what
14 -- okay. We are on the topic --

15 **UNIDENTIFIED SPEAKER:** I think that's a procedural
16 question.

17 **ADMINISTRATIVE LAW JUDGE KOPEK:** Okay. We're on
18 the topic of Open Meeting Act, which governs this meeting.
19 And since there was a comment concerning adding things to the
20 agenda today, I can respond to that.

21 What I'd like to do first, if it's okay, is I have
22 a very brief overview I'd like to give you of the Open
23 Meeting Act, and then at that conclusion I can address the
24 issue about the agenda. Okay.

25 So again, the document from the Attorney General's

1 Office is from 2004, but you do have a current copy of the
2 Open Meeting Act from the government code. Although, I
3 cannot say that there have been no changes from 2004 to 2011,
4 what I can say is the significant provisions of the Act
5 information that is provided by the Attorney General's Office
6 in this handy guide still pertains to the current provisions
7 in the Open Meeting Act.

8 The Office of Administrative Hearings in conducting
9 this meeting is responsible for making sure that it complies
10 with the Open Meeting Act, and each member as a member of the
11 Committee is responsible for ensuring that you comply with
12 the Open Meeting Act. I urge all of you, if you haven't done
13 so already, to please read through the handy guide. The
14 references -- the section references that are given in the
15 discussion you can then find in the copy of the statutes that
16 are at the end of the Attorney General's Office narrative.

17 The significant area that I need the members to be
18 aware of in terms of your responsibility is that what
19 triggers the Act is what is a meeting. And so whenever there
20 is a meeting of a member, then the -- in order to have that
21 meeting, you must comply with the Open Meeting Act.

22 And the definition of what a meeting is can be
23 found at Section 11122.5(a). And for your information, that
24 is found on the second page of the statutes that were
25 provided, and it starts about halfway down the page. And

1 basically, it require -- whenever there is a congregation of
2 a majority of the members of the Advisory Committee at the
3 same time and place to hear, discuss or deliberate upon any
4 item that is within the subject matter jurisdiction of the
5 Advisory Committee. Okay.

6 Now, it also provides that meetings can take place
7 through video conference and, so that's why we have video
8 conference. Now, what is prohibited -- or I shouldn't say --
9 what is also a meeting is what's been known through case law
10 interpretation as a serial meeting, and that's described in
11 Section 11122.5(b), which says that -- that a majority of the
12 members of the Advisory Committee shall not outside of a
13 meeting authorized by this chapter use a series of
14 communications of any kind, directly or through
15 intermediaries, to discuss, deliberate or take action on any
16 item of business that is within the subject matter of the
17 Advisory Committee.

18 And this is further discussed at page six of the
19 handy guide narrative. So if you want to turn to the
20 narrative portion of the guide, page six, and it is paragraph
21 five, which gives a further explanation of what type of
22 communication is prohibited. And it says, "The prohibition
23 applies only to communications employed by a quorum to
24 develop a collective concurrence concerning action to be
25 taken by the body. Conversations that advance or clarify a

1 member's understanding of an issue or facilitate an agreement
2 or compromise among members or advance the ultimate
3 resolution of an issue are all examples of communications
4 that contribute to the development of a concurrence as to
5 action to be taken by the Advisory Committee.

6 "Accordingly, with respect to items that have been
7 placed on an agenda or that are likely to be placed upon an
8 agenda, members of the Advisory Committee shall avoid serial
9 communications of a substantive nature that involve a quorum
10 of the body."

11 Now, what is a serial communication, you may
12 wonder. Going back to the statute where it talks about
13 direct communication, the use of personal intermediaries or
14 technical devices. So the Court has found that there have
15 been serial meetings that should have complied with the Open
16 Meeting Act when various -- when an attorney representing the
17 Board talked one-on-one or had an email communication one-on-
18 one with a majority of the members about something that the
19 Advisory Committee had jurisdiction over.

20 So a series of emails from one member to a majority
21 of the Advisory Committee members concerning an item within
22 the jurisdiction of this Advisory Committee is most likely to
23 be found to be a serial meeting. And what that means is that
24 in order to have a meeting, you have to comply with the Open
25 Meeting Act.

1 So, again, I just urge everyone to read through
2 this information. If you have questions about it, although,
3 I cannot provide you personal legal advice, please contact
4 me, and I can do my best to explain the law and handle it in
5 that manner.

6 I just also want to bring your attention to there
7 are certain exceptions which are found at section 11122.5(c).
8 They're fairly -- I don't want to say detailed -- but they
9 involve social gatherings, and if a majority of the Advisory
10 Committee were all to attend a conference and you wanted to
11 talk, what type of activity under those circumstances would
12 or would not be prohibited without complying with the Open
13 Meeting Act.

14 So at this time I'll open it up to discussion by
15 members of the Committee. Anyone have any comments,
16 questions? Mr. Wright?

17 **MR. WRIGHT:** Question. The -- in that paragraph
18 five on the page six, the last sentence reads, "Involve a
19 quorum of the body." So I just want to understand your --
20 your perspective on communication with less than a quorum of
21 the body is not prohibitive -- prohibited? Is that
22 reasonable or --

23 **ADMINISTRATIVE LAW JUDGE KOPEK:** If you have
24 communication with less than a quorum of the body, it is --
25 does not constitute a meeting, so the Open Meeting Act would

1 not have to apply. Okay.

2 **MR. WRIGHT:** Another.

3 **MS. GUTIERREZ:** And I think -- if I may speak on
4 that, the problem when we start doing emails -- if we email,
5 for example, to one or two members of the Committee, which
6 are less than a quorum, and then someone forwards that email
7 to another member of the Committee, which is then forwarded
8 to another member of the Committee, I'm concerned then that
9 we may meet that quorum and we would be violating that -- the
10 principals of the Open Meeting requirements. We need to make
11 sure that we allowing public input for these issues.

12 **ADMINISTRATIVE LAW JUDGE KOPEK:** Right. That's
13 from Ms. Gut. Just -- it would be helpful -- although, I
14 know it's kind of awkward and -- if you would just indicate,
15 both for the help of those who are participating versus
16 webcam and also for just the record of this hearing, if you
17 just indicate your name at the time that you're speaking.

18 But Ms. Gutierrez raises a very good point, in that
19 that type of chain can also come within the definition of a
20 meeting -- a serial meeting and (inaudible) the Open Meeting
21 Act, so that's a very good point.

22 Any other questions?

23 **MR. WRIGHT:** I have a hand down here.

24 **ADMINISTRATIVE LAW JUDGE KOPEK:** Okay.

25 **MS. MURAI:** This is Miho. I was just -- at the

1 last meeting we had talked about possibly having Committees.
2 How would the Open Meeting Act reflect in terms of
3 discussions that are held within these Committees?

4 **ADMINISTRATIVE LAW JUDGE KOPEK:** To be honest,
5 there is a provision that does pertain to subcommittees. I
6 am not -- I would have to take a look at it and provide an
7 opinion about it for OAH in order to determine whether the
8 subcommittees would comply. I just -- it's not an area that
9 I feel comfortable about at this point.

10 And Mr. Rezowalli?

11 **MR. REZOWALLI:** Kent Rezowalli. I think the intent
12 is not to have the majority of individuals involved in
13 discussions outside of an open meeting, because you can also
14 have two members of a Committee each talking to half the
15 people and getting together. There's a number of ways you
16 can get around that, but the intent is to really not to have
17 a discussion about something you can -- that's in our purview
18 outside of an open meeting.

19 But I do have a comment too. (Inaudible) a bunch
20 of things, I think. Do we have to do -- take ethics training
21 at all?

22 **ADMINISTRATIVE LAW JUDGE KOPEK:** I'm sorry?

23 **MR. REZOWALLI:** Ethics training.

24 **ADMINISTRATIVE LAW JUDGE KOPEK:** No.

25 **MR. REZOWALLI:** Some Committees and --

1 **ADMINISTRATIVE LAW JUDGE KOPEK:** No.

2 **MR. REZOWALLI:** Okay.

3 **ADMINISTRATIVE LAW JUDGE KOPEK:** Yeah. And as Ms.
4 Gutierrez touched upon, the purpose of the Open Meeting Act
5 is to make sure that bodies, such as the Advisory Committee,
6 are open to the public.

7 The Open Meeting Act is sometimes one of those
8 pieces of legislation that are referred to as sunshine laws,
9 which indicate that the light of day sunshine will rain upon
10 deliberations and decisions made by bodies such as the
11 Advisory Committee, so that's the public policy behind it, so
12 that the discussions be held in open, so that members of the
13 public can hear them and then participate as well.

14 So any other comments, questions, before we move
15 on? Any recommendations at this point? Okay.

16 Oh, I do want to -- in terms of Ms. Murai, your
17 comment concerning the agenda. One of the requirements of
18 the Open Meeting Act is that the agenda -- except for
19 emergency meetings, there are some limit -- very limited
20 exceptions to this 10-day notice rule, which I am not aware
21 would apply here. But a requirement of the Open Meeting Act
22 is that the agenda be made public 10 days prior to the
23 meeting, and so it would not be permissible to add an item to
24 the agenda and discuss it at today's meeting, so that touches
25 upon that issue.

1 In terms of how OAH has built the agenda, is that
2 we do send out an email prior to the legal deadline to
3 members of the Committee asking for agenda items.

4 Mr. Wright inadvertently, it is my understanding,
5 that you did not receive that email and --

6 **MR. WRIGHT:** (Overlapping).

7 **ADMINISTRATIVE LAW JUDGE KOPEK:** -- it is just an
8 error, and I apologize on behalf of the Office of
9 Administrative Hearings.

10 So I know that you were able to participate last
11 month, and I know that -- that it didn't happen this month.
12 And again, I am -- I sincerely apologize.

13 **MR. WRIGHT:** There's a hand down here, Miho.

14 **MS. MURAI:** Yeah.

15 **ADMINISTRATIVE LAW JUDGE KOPEK:** Miho.

16 **MS. MURAI:** I didn't get it and I keep all emails.
17 I mean, I'm pretty -- very good. I mean, got the email
18 saying that -- because I remember last time there were an
19 email saying first we would add stuff, and then, you know, I
20 -- nobody sent an email. I guess Bob added -- or somebody --
21 I think that it was Bob that added things directly to whoever
22 sent it, because at the meeting then we all discovered it
23 through the agenda.

24 But I -- I -- I mean, I can't -- I can almost 99
25 percent swear on it that I recall just receiving an email

1 that was sent that contained an agenda and meeting notice
2 that was sent by, I think, Kay Stubbings to the general
3 public. And then I received another email that was to the --
4 to the Committee that just contained all of these documents.
5 And then there was another email the next day that said, "I'm
6 sorry I sent the wrong documents and here are the correct
7 documents." And then Bob had sent an email asking if, you
8 know, last time we were able to add responses and then there
9 was no response to that and then there was a chain of emails
10 about some other issues.

11 **ADMINISTRATIVE LAW JUDGE KOPEK:** Okay.

12 **MS. MURAI:** So I mean, I don't think that -- you
13 know, I personally don't think that it was sent. I don't
14 think Bob does. I'm kind of talking to other people, and I
15 don't think they also feel that it was sent but --

16 **ADMINISTRATIVE LAW JUDGE KOPEK:** Okay. Are there
17 other members in attendance who did not receive the email
18 requesting an agenda?

19 **MS. DALTON:** I don't recall receiving it. I
20 remember being surprised -- this is Margaret Dalton speaking
21 -- but I can't say whether I did or not because I get a lot
22 of emails, but I don't recall -- I definitely recall the rest
23 that Miho is talking about, but I don't recall receiving it --
24 -

25 **MS. GRAVES:** I did a search to see whether -- this

1 is Maureen Graves -- I did a search to see whether I had
2 received one, and I found something and immediately presumed
3 that I was guilty, but it's possible that I found it -- last
4 year's so -- I'm not sure.

5 **UNIDENTIFIED SPEAKER:** Yeah. (Overlapping).

6 **MS. GRAVES:** But I did find something.

7 **ADMINISTRATIVE LAW JUDGE KOPEK:** Okay. I'll just -
8 - Ms. Broussard has this wonderful little tablet device, and
9 I'll just indicate that email appear sent -- was sent to Ms.
10 Bean, Ms. Broussard, Ms. Dalton, Ms. Dalton, Mr. Eisenberg,
11 Ms. English, Ms. Foody, Mr. Gibson, Ms. Graves, Ms.
12 Gutierrez, Ms. Johnson and Ms. Leavitt.

13 **UNIDENTIFIED SPEAKER:** And what's the date on that
14 judge?

15 **ADMINISTRATIVE LAW JUDGE KOPEK:** The date of the
16 email was September 19th, 2011.

17 **UNIDENTIFIED SPEAKER:** Okay. Thank you.

18 **ADMINISTRATIVE LAW JUDGE KOPEK:** So Mr. Rezowalli
19 didn't get it. So again, I -- I very much apologize, and
20 there is no explanation -- good explanation for what
21 happened, other than it happened and I can tell you it was an
22 unintended oversight and I sincerely apologize.

23 And what I can tell you is sort of two things.
24 One, I will do everything I can to make sure that this does
25 not happen again. Number two, you know, if we -- we will

1 come up with a tentative meeting date at the end of this
2 meeting. It -- the meeting I'm proposing will be around this
3 time in April. As that meeting time comes close, there is no
4 -- nothing preventing you from sending an agenda item to me
5 or to Kay Stubbings, at any time frankly.

6 I mean, you could -- I would say if you want to --
7 if you leave today and there are agenda items that you want
8 to have on that meeting, by all means send me the email. And
9 certainly as time gets closer, like I said, I will do what I
10 can humanly do to make sure it doesn't happen again. If you
11 are not getting the email and you see that the meeting is
12 coming up, either send me an email or pick up the phone and
13 call me.

14 What I can say is that legally there is -- we are
15 not in violation of the Open Meeting Act by what happened,
16 but again, I am very, very, very sorry.

17 Any further comment?

18 **UNIDENTIFIED SPEAKER:** Yeah.

19 **ADMINISTRATIVE LAW JUDGE KOPEK:** Yes, Mr.
20 Rezowalli?

21 **MR. REZOWALLI:** I believe some Committees do --
22 they are allowed to put agenda items on at the meeting that
23 are not voted on, just discussion items, and my understanding
24 is that it may not be allowed at this meeting?

25 **ADMINISTRATIVE LAW JUDGE KOPEK:** That's correct.

1 Okay. Anything else? Okay.

2 Moving along. The next item is the terms of the
3 Advisory Committee members. For those of you who are
4 continuing, the next meeting, which will be held in the
5 spring, will be your final -- the end of your term on the
6 Advisory Committee. You are encouraged to reapply, but you
7 would need to submit an application when we announce what
8 that timeframe will be in the spring. For those of you who
9 are new and this is your first meeting, you will not need to
10 reapply until the spring of 2013. Any questions about the
11 terms? Okay.

12 A clerical typo. We have two items C, but the
13 following -- the next one should be item D, 2(d), staff
14 changes at OAH. Bob Varma has been appointed the presiding
15 Administrative Law Judge of the Sacramento Special Education
16 Office. He had served in an Acting capacity, and he is now
17 the permanent presiding ALJ in Sacramento.

18 Similarly, Administrative Law Judge Richard Breen
19 had served as the Acting presiding Administrative Law Judge
20 in Van Nuys, and he has now been appointed to that position.

21 Laura Gutierrez, who you may know as the supervisor
22 over our calendar clerks, she has accepted a promotion with
23 the Office of Administrative Hearings to be our human
24 resources analyst, so she is no longer working in special
25 education. That position, I believe, will be filled, but

1 currently Jennifer Haley (phonetic), who is a calendar clerk,
2 she is acting in a lead capacity. So if there are some
3 issues or concerns that you may have, particularly if you
4 have cases involved -- excuse me -- please contact Jennifer
5 Haley.

6 And then Cheryl Hill (phonetic), who is our staff
7 services manager over the calendar clerk area, she is
8 basically handling any sort of managerial issues relating to
9 calendar clerks and the processing of cases. So if you have
10 any questions or issues or concerns in that regard, please
11 contact Ms. Hill.

12 Any questions, comments on that? Okay. Moving
13 along to number three on the agenda, the hearing and
14 mediation processes. The first party item is the initial
15 scheduling order protocols. And I provided to you a chart
16 that is captioned "proposed special education scheduling
17 protocols," and I tried to layout clearly what the current
18 protocols are and what we are proposing.

19 What these -- what these scheduling protocols are
20 is that when staff open up a case and they issue the
21 scheduling order with the initial mediation prehearing
22 conference and due process hearing dates, they follow a
23 protocol in terms of when to schedule them, counting days
24 from the date of filing.

25 And in a discussion with all of the special

1 education presiding Administrative Law Judges and looking at
2 our calendar and basically taking seriously the policy of the
3 law, both state and federal, that special education matters
4 are to be resolved quickly and that decisions are to be
5 rendered within 45 days or plus a resolution session period
6 for filings from parents and students, that we could -- it is
7 decided that what we should do is basically tighten these up
8 a little bit, basically shortening some of them to try to see
9 if we can get matters moving and resolved a little bit
10 faster.

11 So generally, each of the columns -- we have
12 separate types of matters. So the first column has to do
13 with mediation only matters. So the current process is that
14 that mediation is scheduled 15 days from the date of filing,
15 and we are proposing that that be shortened to 10 days from
16 the date of filing. Obviously, there's no prehearing
17 conference. There's no due process hearing.

18 The next column over is for student filed hearing
19 only matters. There's no mediation that needs to be
20 scheduled. Down the next row to the prehearing conference.
21 Currently, the prehearing is schedule 35 days after filing,
22 and we are proposing that it be scheduled 32 days after
23 filing. Of course, we cannot schedule the prehearing until
24 the 30-day resolution session has passed, so the 30 days is a
25 given, and then we're just going from 35 to 32 days. And in

1 terms of the due process hearing, we currently schedule the
2 hearing one week after the prehearing conference, and we are
3 not proposing a change in that.

4 Going over to the next column, we have district
5 filed only cases. No mediations need to be filed. We
6 currently file the prehearing conference 15 days after the
7 filing of the matter, and we are proposing that we file -- we
8 have the prehearing conference 10 days after filing of the
9 matter. And again, the due process hearing is scheduled one
10 week after the prehearing conference, and we are not
11 proposing any change to that.

12 The next column is for student filed mediation and
13 due process hearing cases. For the mediation, we currently
14 file those -- we currently schedule those 35 days after
15 filing, and we are proposing that they be scheduled 32 days
16 after filing. Again, we have to wait the 30 days for the
17 resolution session before we start counting and scheduling.
18 The prehearing conference is scheduled five days before the
19 due process hearing, and we're not proposing a change for
20 that. And the due process hearing currently is scheduled 55
21 days after filing, and we are proposing that it be scheduled
22 45 days after filing.

23 The district filed mediation and hearing cases, we
24 currently have the mediation scheduled 15 days after filing,
25 and we are proposing that they be scheduled 10 days after

1 filing. The prehearing conferences currently are scheduled
2 five days prior to the due process hearing, and we are not
3 proposing to change that. And for the hearing date, the
4 hearing is currently scheduled 25 days after filing, and we
5 are proposing that you schedule the hearing 15 days after
6 filing.

7 And finally, for expedited due process hearings, we
8 currently schedule the mediation 10 business days after
9 filing, and we are proposing that we schedule them 10 days
10 after filing. Prehearing conferences are currently scheduled
11 five days prior to the due process hearing, and we are not
12 proposing to change there. And the due process hearing is
13 currently scheduled 20 school days after filing, and we are
14 not proposing any change in that regard.

15 So I know that's lots of information and lots of
16 numbers. Hopefully, the -- the chart makes it a little bit
17 easier to follow and compare, but at this point do we have
18 any discussion? Ms. Broussard?

19 **MS. BROUSSARD:** I just have a question, and maybe
20 my mind is just going blank. What is the difference between
21 a student filed due process hearing only and a student filed
22 mediation and due process? Are you no longer assuming that -
23 - that if a student files for a due process hearing they want
24 mediation?

25 **ADMINISTRATIVE LAW JUDGE KOPEK:** We have had -- not

1 many -- but we do have some, both students and districts, who
2 file for due process hearing only and do not want mediation.

3 **MS. BROUSSARD:** So you have to affirmatively opt in
4 to that category?

5 **ADMINISTRATIVE LAW JUDGE KOPEK:** Yes.

6 **MS. BROUSSARD:** Okay.

7 **ADMINISTRATIVE LAW JUDGE KOPEK:** Our current
8 practice is that if we just -- if they don't check the box --
9 the default, I guess, is that whether it's -- whether it's
10 any filing, student or district, that we will schedule for
11 mediation and for hearing.

12 **MS. BROUSSARD:** Okay.

13 **ADMINISTRATIVE LAW JUDGE KOPEK:** And mediation only
14 is provided by statute. Mediation is voluntary, so if
15 someone files and they don't want mediation, then we'll
16 handle that.

17 I should say that what we do is -- generally as a
18 rule, when we get a hearing only request we do have staff
19 contact -- it used Laura Gutierrez but now it's Haley, the
20 lead staff, will contact the party just to see whether that's
21 really what they attended, and frankly, just to encourage
22 mediation because that's a policy that's underwritten in the
23 law and -- but obviously, it's voluntarily and if they're not
24 interested to mediate, then just go forward.

25 **UNIDENTIFIED SPEAKER:** Oh, I'm sorry.

1 **MR. WRIGHT:** In Southern California every hand is
2 up.

3 **ADMINISTRATIVE LAW JUDGE KOPEK:** Okay. Ms.
4 Broussard -- let's -- you have a follow-up?

5 **MS. BROUSSARD:** Yeah.

6 **ADMINISTRATIVE LAW JUDGE KOPEK:** Okay.

7 **MS. BROUSSARD:** It's on the same topic.

8 **ADMINISTRATIVE LAW JUDGE KOPEK:** Okay.

9 **MS. BROUSSARD:** Under district filed due process
10 hearing only my one concern on the whole paper is imposing a
11 10 -- filing plus 10-day prehearing conference statement
12 requirement for district filed -- filed due process. I'm
13 concerned that it wouldn't give parents enough time to figure
14 out who their witnesses are going to be. If we're holding
15 people to the standard of it, your prehearing conference
16 statement would then be seven days after they got a file. It
17 might not be -- it might be eight days after they got it in
18 the mail -- that they would have to have their documents and
19 witnesses done in what seems to me to be an incredibly short
20 period of time.

21 **MR. WRIGHT:** Thank you.

22 **ADMINISTRATIVE LAW JUDGE KOPEK:** And then in
23 southern -- I'll try to alternate north and south. So Mr.
24 Wright whoever you --

25 **MR. WRIGHT:** Maureen, please.

1 **MS. GRAVES:** Yeah. I would yes with that. And I
2 would also point out that it would pretty much impossible for
3 a parent to get legal representation on that timeframe. They
4 probably wouldn't be able to meet with anybody, much less get
5 them to take your case and prepare it timely, the PHC
6 statement.

7 **ADMINISTRATIVE LAW JUDGE KOPEK:** Okay. Northern
8 California? Okay. Southern California? Anyone else?

9 **MR. WRIGHT:** Miho.

10 **MS. MURAI:** Yeah. I would -- I would say also that
11 goes for the district filed mediation and, you know,
12 (inaudible) filed with and without the mediation.

13 Also, the other issue that I wanted to raise -- I
14 believe it's appropriate here -- is that when there is a
15 student filed due process request and we specify we want a
16 five-day hearing but then they only issue a one-day hearing,
17 and so then at the one-day hearing there's always a
18 continuance and it's further delay for the students.

19 And so I was hoping that, you know, if we request
20 on the due process for a five-day hearing we're -- we get a
21 five-day hearing date so that we don't waste time getting a
22 continuance because it -- and then -- I mean, it just -- and
23 to me, I mean, working on both sides -- like working in terms
24 of defending due process hearings that district has filed and
25 filing due process hearings for students and parents, I don't

1 see that often for the district.

2 When the district file -- when their dates they
3 want, they stay. Whereas, for the parents and students, it's
4 always continued in my experience.

5 **ADMINISTRATIVE LAW JUDGE KOPEK:** Okay.

6 **MS. MURAI:** In the experience of the parents that
7 come to me.

8 **ADMINISTRATIVE LAW JUDGE KOPEK:** I just --

9 **MS. MURAI:** And I don't know if that can be
10 somehow, you know, included in there when you're specifying a
11 specific date, and you're not just given one date.

12 **ADMINISTRATIVE LAW JUDGE KOPEK:** Okay. As to --
13 there are two issues, as I understood it, that you raised.
14 One is you want -- you're indicating that if you request more
15 than one day that you be given more than one day. The other
16 one was continuances of that initial hearing date.

17 I just want to bring to your attention that item
18 3(c) talks about conducting hearing on the initial hearing
19 date. So we will have a separate discussion about that item,
20 so I would certainly urge you to bring that up at that time.

21 **MR. WRIGHT:** Margaret Dalton.

22 **MS. DALTON:** I just wanted to join in the
23 discussion on the changes -- shortening the day for anything
24 district filed, and I know we already heard it, but I just
25 think it's important enough to be sure we're all on the

1 record. So the filing plus 10 for the PHC and the district
2 filed DPH only go with the mediation and DPH with the filing
3 plus 15 for the hearing.

4 I agree. I think it's going to be almost virtually
5 impossible for parents to get representation. It's tough
6 now. And the reason is we don't have that extra 30 days. If
7 you have the extra 30-day resolution session, it's -- it's
8 not an issue. They will bear -- I don't know how they're
9 going to do their PHC. I mean, if they represented
10 themselves, so it's -- it's a big concern. You know, I
11 appreciate shortening the timeframe, but concerned about how
12 it will impact parents.

13 **MR. WRIGHT:** Maureen.

14 **MS. GRAVES:** Yeah. I'd be curious if the district
15 people and representatives on the Committee even think this
16 one's a good idea.

17 **MS. FOODY:** Amy Foody.

18 **MR. WRIGHT:** Amy Foody.

19 **MS. FOODY:** Amy Foody. No. I think it's awfully
20 short, besides the parents not being able to get
21 representation. The way I'm looking at it, it looks as if
22 the mediation and -- and PHC almost end on the same day and
23 will land on the same day. If we're going to mediation 10
24 days after filing and you have to have PHC five days before
25 the hearing, the -- it looks like it's the same day.

1 **ADMINISTRATIVE LAW JUDGE KOPEK:** Is there --

2 **MS. FOODY:** Maybe I'm reading it wrong.

3 **ADMINISTRATIVE LAW JUDGE KOPEK:** Is there a
4 recommendation from the Committee that's evolving as to the
5 proposed changes as to district filings?

6 **MR. WRIGHT:** Maureen Graves.

7 **MS. GRAVES:** I would move that those not be changed
8 at this time.

9 **MS. DALTON:** I'd second it. Margaret Dalton.

10 **ADMINISTRATIVE LAW JUDGE KOPEK:** Okay.
11 (Overlapping).

12 **MR. REZOWALLI:** I'm not -- is there a particular --
13 one particular item here is specified on the -- because we're
14 talking about a couple of things. Just which little box are
15 we talking about then?

16 **MS. GRAVES:** We're talking about the box on
17 district mediation and due process that there would continue
18 to be filing -- that those would continue -- mediation would
19 continue to be sent 15 days out, not 10 days out. That the
20 PHC would -- that's -- there's no proposal to change that.
21 And that the hearing would continue to be set 25 days out,
22 not 15 days out. That's -- and then on district filed due
23 process only that the PHC continue to be set 15 days out, not
24 10 days out.

25 **MR. WRIGHT:** So we're still having discussions.

1 **UNIDENTIFIED SPEAKER:** In other words, no change.

2 **ADMINISTRATIVE LAW JUDGE KOPEK:** So basically,
3 there would be no --

4 **MR. WRIGHT:** I'd like to say something.

5 **ADMINISTRATIVE LAW JUDGE KOPEK:** Wait a minute.
6 Basically, there would be no change. The recommendation is
7 that OAH not change the scheduling -- initial scheduling
8 protocols for district filed matters, including district
9 filed hearings and district filed mediations and hearings; is
10 that correct Ms. Graves?

11 **MS. GRAVES:** Yes.

12 **ADMINISTRATIVE LAW JUDGE KOPEK:** Okay. Mr. Wright?

13 **MR. WRIGHT:** Yes. Discussion --

14 **ADMINISTRATIVE LAW JUDGE KOPEK:** I just wanted to
15 indicate, Ms. Dalton, you seconded that, correct?

16 **MS. DALTON:** Yes.

17 **ADMINISTRATIVE LAW JUDGE KOPEK:** Okay. Mr. Wright?

18 **MR. WRIGHT:** I wanted to -- I wanted to continue
19 discussion before we voted.

20 **ADMINISTRATIVE LAW JUDGE KOPEK:** Absolutely.

21 **MR. WRIGHT:** And my concerns are that for the
22 students, whether the district has filed against them or they
23 are filing against the district, they need more time, not
24 less. It's impossible to get an attorney and -- unless
25 you're very wealthy. And in my own experience, you know --

1 again, my perspective is that we ought to allow the students
2 more time in all of these areas to best represent themselves.

3 And as a question, why did this -- I missed your
4 introduction to this topic. What is the reason that the OAH
5 makes these recommendations today?

6 **ADMINISTRATIVE LAW JUDGE KOPEK:** We made the
7 recommendations in order to ensure that the timeframes that
8 are clear in both federal and state law that these matters
9 have a speedy resolution, and so it was decided that by
10 moving up the dates and getting the process started sooner
11 there will be a resolution for parents, families and
12 districts sooner, so that we can effectuate the clearer
13 policy directive in the law that these matters be resolved
14 within 45 days.

15 **MR. WRIGHT:** One other question. The last meeting
16 we had we had the item about request to unexpedite a hearing.
17 I'm not an attorney, but in layman's terms if one of the
18 party -- the student, for example -- request that we
19 unexpedite the process to give them adequate time to find
20 representation or to prepare their own representation, is
21 that an option for a student?

22 **ADMINISTRATIVE LAW JUDGE KOPEK:** The agenda today
23 does not include a discussion of expediting and unexpediting.
24 I'm not quite sure how the comment -- your comment relates to
25 the --

1 **MR. WRIGHT:** It was a question.

2 **ADMINISTRATIVE LAW JUDGE KOPEK:** -- scheduling
3 protocols. I see a hand up but I don't know whose it is.

4 **MR. WRIGHT:** Maureen.

5 **MS. GRAVES:** Maureen. My understanding is that if
6 a parent requests a continue -- all of these are still
7 subject to continuance for good cause. So if a parent
8 requests a continuance because they need more time to get
9 counsel and they show that they're looking for counsel and
10 the district doesn't show a very excellent reason why the
11 hearing has to happen immediately before they can get
12 counsel, I think that would typically be considered good
13 cause for a continuance.

14 **UNIDENTIFIED SPEAKER:** Even on an expedited?

15 **MS. GRAVES:** No.

16 **UNIDENTIFIED SPEAKER:** Even on a -- the question is
17 if that's even on an expedited, so I don't think it's --

18 **MS. GRAVES:** No. Not an expedited.

19 **UNIDENTIFIED SPEAKER:** That's the concern.

20 **ADMINISTRATIVE LAW JUDGE KOPEK:** Okay. Northern
21 California. Ms. Gutierrez?

22 **MS. GUTIERREZ:** Yes. Since I seem to be one of the
23 few people that represent school districts, I'll speak on
24 this matter. Definitely in representing school districts, I
25 do feel that we should take action to move towards speedy

1 resolution at any time there is a dispute.

2 I'm looking at the short -- the proposed shortening
3 of the timelines in these two different categories, or
4 actually the three different categories. I probably would
5 say I don't feel real strongly about it one way or the other.
6 We're talking about, you know, five day difference, I
7 suppose, or seven day if we're actually talking about real
8 days. I really don't feel strongly that that change
9 absolutely needs to be made.

10 I do think that it's hard to talk about this topic
11 without talking about topic 3(c) because we think that we all
12 know that are in this area of law that once that initial date
13 is set, whether it's the 10 days after or the 15 days after,
14 it's going to likely be continued.

15 And since we all know that very often these initial
16 dates are likely continued, I kind of like this thought of
17 getting the process started and getting these dates on
18 calendar because we know that those dates are most likely
19 going to move later.

20 I don't feel strongly about it one way or the
21 other, and it sounds like there's a lot of concern about --
22 about the shortening of the timeline, but that's -- that's my
23 input from the school district perspective.

24 **ADMINISTRATIVE LAW JUDGE KOPEK:** Okay. And Mr.
25 Rezowalli?

1 **MR. REZOWALLI:** I was going to comment to bring
2 back to the discussion about the motion. I think we moved
3 away to another -- off this motion topic --

4 **ADMINISTRATIVE LAW JUDGE KOPEK:** Okay.

5 **MR. REZOWALLI:** -- but it was brought back so.

6 **ADMINISTRATIVE LAW JUDGE KOPEK:** Okay. Anything --
7 anything else in Northern California? Any further discussion
8 in Southern California? Do we have any --

9 **MR. WRIGHT:** Yes. We have one more.

10 **MS. MURAI:** Sorry.

11 **ADMINISTRATIVE LAW JUDGE KOPEK:** Okay.

12 **MS. MURAI:** I also have some concerns about the
13 expedited due process hearing in terms of the date -- the
14 proposed date being moved 10 business days to 10 days because
15 that could --

16 **UNIDENTIFIED SPEAKER:** That's a good point.

17 **MR. WRIGHT:** Four days.

18 **MS. MURAI:** You know, that's not enough time for
19 them to prepare. Even if they had to get records requests,
20 that's within five business days, and so I think that would
21 put, you know, the student's parents at a very disadvantage
22 because they don't even have the records.

23 **ADMINISTRATIVE LAW JUDGE KOPEK:** Okay. Ms. Graves,
24 correct me if I'm wrong, but I think your recommendation only
25 pertains to district filed hearings and district filed

1 mediation and hearings. It does not apply to expedited
2 hearings; is that correct?

3 **MS. GRAVES:** That's correct. And I guess a
4 district -- do districts ever file expedited hearings? I
5 have not seen that.

6 **ADMINISTRATIVE LAW JUDGE KOPEK:** Yes.

7 **UNIDENTIFIED SPEAKER:** Yes.

8 **ADMINISTRATIVE LAW JUDGE KOPEK:** So at this time,
9 unless I misunderstood --

10 **MS. GRAVES:** Yeah. It would not be shortening
11 those either. It would be -- I guess it would apply to those
12 then, if it's district filed so it would keep business days.

13 **ADMINISTRATIVE LAW JUDGE KOPEK:** Well, what I would
14 -- what I would suggest, if possible, just again to keep
15 things orderly, since we've had some extensive discussion on
16 the motion originally, which pertained to -- which, again,
17 I'll rephrase it.

18 That OAH not change the scheduling protocols for
19 district filed hearing only in district filed mediation and
20 hearing. That we wrap up the discussion on that item and
21 then take a vote.

22 And then Ms. Graves or someone else, if you want to
23 propose a recommendation that if you have a district filed
24 expedited that we address that separately.

25 **MS. GRAVES:** Yes. Okay. My motion does not

1 include expedited hearings.

2 **ADMINISTRATIVE LAW JUDGE KOPEK:** Okay. Terrific.
3 Is there any further comment on the current recommendation?
4 Mr. Wright?

5 **MR. WRIGHT:** Yes. I think we ought to include --
6 not make any changes to anything that is going affect the
7 student's ability to represent themselves.

8 **ADMINISTRATIVE LAW JUDGE KOPEK:** Okay. Mr. Wright,
9 I see that as broadening the discussion, and what I would
10 suggest is let's finish up what we have before us, which are
11 just district filed hearing only and district filed mediation
12 and hearing, and then if you have another recommendation that
13 we can go ahead and make, and then see what the discussion
14 is.

15 So is there any further discussion on Ms. Graves'
16 motion that OAH not change the protocols for district filed
17 hearing only cases or district filed mediation and hearing
18 cases?

19 **MS. GUTIERREZ:** I guess I just --

20 **ADMINISTRATIVE LAW JUDGE KOPEK:** Ms. Gutierrez?

21 **MS. GUTIERREZ:** Just would have a question just of
22 OAH itself. I understand the reason for proposing this. Was
23 this something that has been worked on by OAH for a number of
24 months? Is it something that OAH feels strongly about that
25 will assist in the efficiency of OAH's own calendaring?

1 **ADMINISTRATIVE LAW JUDGE KOPEK:** It is something
2 that we discussed. I can't -- the -- I should say the
3 special education presiding judges and myself, we all meet
4 once a month to have a meeting. And we discussed this for --
5 in some detail at, if I remember correctly, at least one
6 meeting. To be honest, I don't remember whether we discussed
7 it more than once.

8 But we are looking -- we're always looking at ways
9 to improve how to handle things. As with everybody's
10 calendaring, especially this time of the year, is always,
11 always a struggle. So I believe that this was one idea that
12 we came up with to try to -- again, the motivation clearly
13 was to try to have hearings held in a speedy manner. You
14 know, we -- we have been very fortunate, even given all of
15 our staff cutbacks and not being able to hire behind people
16 that have left, to maintain a hundred percent on-time for
17 decisions in terms of counting it with continuances and what-
18 not.

19 But looking at the figures nationwide, California,
20 even when you compare us with the other large filing
21 jurisdictions -- you know, the overwhelming -- there are
22 very, very few cases that go with -- for 45 days without any
23 continuances, so they're all within that extension.

24 Again, that complies with the law, but in looking
25 at it we thought, you know, to the extent that we are -- the

1 law requires us to have speedy cases, is there any way that
2 we can try to get things moving faster? I mean, not only --
3 that's not it. Just to try to use our policies in terms of
4 calendaring so that we are basically implementing the spirit
5 of the law and not just the letter of the law, so that is the
6 motivation.

7 I mean, how seriously? We felt seriously enough
8 about it as an idea in -- to move us in that direction to
9 bring it up to you, but we bring it up to the Advisory
10 Committee because, obviously, you're out there working in the
11 field and this will have an effect on you, and we wanted that
12 input and we will take it seriously in terms of responding to
13 any recommendation. Yeah, Ms. Gutierrez?

14 **MS. GUTIERREZ:** I was just going to ask if there
15 was anyone else on the Committee -- I know we all introduced
16 ourselves -- who represents school districts that would like
17 to speak on this that we haven't heard your input yet?

18 **MS. BEAN:** I just have a comment. It just seems
19 like the Committee -- this is Traci Bean -- that the
20 Committee is really showing an effort of goodwill in this
21 matter in saying that we are all going to try and get things
22 accomplished for the students in a more speedy manner.
23 Knowing that, there's these other contingencies that can
24 happen and always do happen.

25 So I think, as a parent and as a special educator,

1 I feel that it's -- the Committee is trying to put out a way
2 to say we want what's best for the kids to happen as soon as
3 possible. So that's my --

4 **ADMINISTRATIVE LAW JUDGE KOPEK:** Okay.

5 **MS. BEAN:** -- input.

6 **ADMINISTRATIVE LAW JUDGE KOPEK:** Thank you. Anyone
7 else? Northern California? Southern California? Do we have
8 any comments? No public comments?

9 **MR. BARTH:** Okay. One just came in.

10 **ADMINISTRATIVE LAW JUDGE KOPEK:** Okay.

11 **MR. BARTH:** Oh, no. It's not a comment.

12 **ADMINISTRATIVE LAW JUDGE KOPEK:** Okay.

13 **MR. BARTH:** Yeah. It is. Let me print it out.

14 Excuse me. It absolutely just hit me.

15 **MR. WRIGHT:** Can you introduce your name? We can't
16 hear you down here, who your name -- who's speaking.

17 **ADMINISTRATIVE LAW JUDGE KOPEK:** No. That was --
18 instead of off the record, I was just checking with Judge
19 Barth to see whether we had any public comments coming in
20 from the website on this topic, and we do have one, and Judge
21 Barth is, I'm sure, literally running down the hall to get
22 them printed. So as soon as he comes back we will read that
23 comment and then see if there's any further discussion.

24 (Overlapping). I'm sorry. Thank you. Public comments are -

25 -

1 **MS. RANSOM:** (Inaudible).

2 **ADMINISTRATIVE LAW JUDGE KOPEK:** Okay.

3 **MS. RANSOM:** I'm Barbara Ransom (phonetic). I'm a
4 parent's attorney and I recognize that very few of these
5 hearings -- well, very few that I've participated in just
6 automatically go forth in the timeframe. Most we get
7 continuances for one reason or another, but I do think that
8 changing it -- the change appears to me not that -- we're
9 talking about three days. We're talking about five days. So
10 I don't -- I don't see that these changes will effectuate the
11 goal that OAH expressed. And as a parent's attorney, I would
12 say that I don't see the need for making the changes.

13 **ADMINISTRATIVE LAW JUDGE KOPEK:** Okay. Thank you.
14 Any --

15 **MR. WRIGHT:** Should I invite public comment at this
16 point --

17 **ADMINISTRATIVE LAW JUDGE KOPEK:** I was going to say
18 let's say if there's public comment in Los Angeles.

19 **UNIDENTIFIED SPEAKER:** We would propose from LAUSD
20 that we leave things as they are. Our numbers are
21 significantly high. We have a hard enough time right now
22 scheduling with the timelines that we have in an effort to
23 expedite -- and I won't even use the word expedite -- but in
24 order to get these done quickly for the families and for the
25 district, so we would prefer, if we can, to leave things as

1 is.

2 **ADMINISTRATIVE LAW JUDGE KOPEK:** Okay. Thank you.
3 Anything else?

4 **MR. WRIGHT:** That was unanimous between the four of
5 them.

6 **ADMINISTRATIVE LAW JUDGE KOPEK:** Okay.

7 **UNIDENTIFIED SPEAKER:** Yes, it is.

8 **ADMINISTRATIVE LAW JUDGE KOPEK:** Terrific. Mr.
9 Rezowalli?

10 **MR. REZOWALLI:** Yes. I have a comment that was
11 just emailed in. It's just a request to receive the chart
12 that's being -- I'll just read it word for word. "Could you
13 please send me the chart that is being discussed in agenda
14 item 3(a) regarding the proposed changes or timelines for
15 filing and such."

16 **ADMINISTRATIVE LAW JUDGE KOPEK:** I believe the
17 chart should be available on the website. Didn't put it on?

18 **UNIDENTIFIED SPEAKER:** I don't think so.

19 **ADMINISTRATIVE LAW JUDGE KOPEK:** I'm sorry. Then
20 it wasn't put on the website. But what we could do is we
21 have the email and we will -- as long as we have the email
22 from that commenter, I will make sure that we send a copy to
23 the commenter. And again, for clarification, this document
24 was not on the website. And my apologies, I -- anything
25 further? Are we ready to take a vote? Okay.

1 Let's take a vote starting in Northern California.
2 The recommendation is that OAH do not -- does -- OAH should
3 not make any changes to the initial scheduling protocols for
4 district filed DPH only matters and district filed mediation
5 and due process hearing matters.

6 All in favor in Northern California? Okay. It is
7 everyone except Ms. Gutierrez. So for the record Ms. Bean,
8 Mr. Rezowalli, Ms. Leavitt, Ms. Broussard, Ms. Sherman and
9 Ms. English all in favor. And opposed is Ms. Gutierrez.

10 And in Southern California, all in favor? Okay.
11 Mr. Wright, I'll need you to indicate -- give me a roll.

12 **MR. WRIGHT:** Margaret Dalton -- it's unanimous for
13 the Board members that are here, and that's Margaret Dalton,
14 Maureen Graves, Miho Murai and Amy Foody.

15 **UNIDENTIFIED SPEAKER:** And yourself, yes.

16 **ADMINISTRATIVE LAW JUDGE KOPEK:** Okay. Thank you.

17 **MR. WRIGHT:** Oh, and myself. Yes. Thank you.

18 **ADMINISTRATIVE LAW JUDGE KOPEK:** All right. Then
19 it passes in both Northern and Southern California.

20 We had some discussion that was -- sounded like it
21 may be another recommendation on this topic. At this point,
22 would any member wish to propose another recommendation? Mr.
23 Wright?

24 **MR. WRIGHT:** I'll recommend that we do as the team
25 from the LA Unified District have recommended. That there's

1 no changes made.

2 **ADMINISTRATIVE LAW JUDGE KOPEK:** Okay. Is there a
3 second?

4 **MS. GRAVES:** Second.

5 **ADMINISTRATIVE LAW JUDGE KOPEK:** And who was that?

6 **MS. GRAVES:** Maureen.

7 **MR. WRIGHT:** Maureen.

8 **ADMINISTRATIVE LAW JUDGE KOPEK:** Okay. Thank you.
9 Okay. Discussion? Any further?

10 **MR. WRIGHT:** Ms. Graves.

11 **ADMINISTRATIVE LAW JUDGE KOPEK:** Okay.

12 **MS. GRAVES:** Yeah. I think hearings come up quite
13 fast as it is, and particularly from the student's side, not
14 knowing whether something is going to be resolved within the
15 30 days, having only two days after the expiration of the 30
16 days to have the PHC. Your PHC statement would be due, and
17 you would have to do a lot of work before you even know
18 whether the case is going to be resolved informally before
19 mediation, so I think this just comes up too fast.

20 **MR. WRIGHT:** Miho?

21 **MS. MURAI:** Oh. I mean, I think part of my concern
22 is more about -- I think it relates to the continuance issue
23 and what I, you know, mentioned before in terms of the
24 scheduling of the due process because as -- I know when I
25 represent parents and students, they get frustrated that it

1 gets more delayed.

2 So on their behalf -- you know, I would think that
3 if the student filed due process hearing, if it was more
4 quickly set, it would give them more remedy. But again, I
5 think it kind of -- you can't -- I feel like we can't really
6 make this decision unless we decide and discuss the
7 continuance issue and the issue of, you know, parents and
8 students requesting five due process -- you know, five days
9 of hearing and then only getting one day.

10 So I mean, I -- it's hard for me to, you know, vote
11 on it or make a recommendation without hearing that
12 discussion first.

13 **MR. WRIGHT:** Maureen.

14 **MS. GRAVES:** Yeah. I think that right now the
15 student days are completely illusory. There's no way nobody
16 with the burden of proof can -- at least on the student's
17 side can win a hearing in a day, so we all need hearings in
18 every case to be more than a day long.

19 So I think the important thing is to make that date
20 real by giving us a number of dates that's reasonable, not to
21 start the process of negotiating a few days earlier at a
22 point when we don't even know whether we're going to have a
23 hearing or a mediation.

24 **MR. WRIGHT:** Thank you. I --

25 **MS. GRAVES:** And I think it would put much more

1 pressure on districts to actually try to resolve things if --
2 and to come -- to try to resolve things at mediation, if they
3 knew that there was actually a five-day hearing on calendar
4 and a hearing might happen and 40 -- 55 days then to know
5 that there's another date they're going to have to change in
6 45.

7 **MR. WRIGHT:** My comment as a parent -- when the
8 district filed on us, it was mailed to our home, and it took
9 five days for that notice to arrive on my front door. And
10 then I had to fill out the request for a continuance, and
11 without legal representation nor any help from the OAH, my
12 form wasn't submitted properly and was denied for procedural.

13 And I was then given some help to get it filled out
14 correctly, but the -- the onus of responsibility trying to
15 put that on the parent of a child with special needs that
16 can't afford or does not have any kind of legal
17 representation is -- is too great of a burden. And we as a
18 group are not focusing enough of our -- our intentions and
19 focus on the students that can't afford an attorney, the
20 families that are struggling so hard just to take care of
21 their -- their -- their family. They don't have time to
22 research these things.

23 You know, we -- the experts that do this for a
24 living, they have the ability and the experience to do these
25 things quickly. If you are, you know, an individual without

1 any of this experience, it's -- it was very difficult to
2 represent yourself. And I'm -- I'm (inaudible) and work --
3 you know, I -- excuse me. I just -- looking at the data from
4 the OAH, it's obvious there are -- you know, the majority of
5 the cases that are filed are filed by students, and the
6 majority of those are with representation.

7 And I know with these economic times that the
8 majority of the -- you know, in San Diego County, the paper
9 last week said 30 percent of the people in San Diego County
10 live under the poverty level. Affording an attorney is --
11 you know, to even have the time to do the research to try and
12 ask for free help is more than is reasonable, I think. Thank
13 you.

14 **ADMINISTRATIVE LAW JUDGE KOPEK:** All right.
15 Northern California. Ms. Gutierrez?

16 **MS. GUTIERREZ:** This is probably my last comments,
17 but I said earlier I don't have any strong feelings about
18 this exact change. I do fully believe in the right to a
19 speedy hearing.

20 What I would probably -- am probably going to do as
21 a member of the Committee is not take any further action on
22 this today in my voting, but I would like to be able to --
23 I'm going to contact some of my colleagues that represent
24 school districts and see if some of the attorneys that
25 represent school districts do feel strongly about these

1 proposed timelines.

2 And if necessary, based upon the vote that comes on
3 this topic today, may propose it as a further agenda item at
4 a later date.

5 **ADMINISTRATIVE LAW JUDGE KOPEK:** Okay. Any further
6 discussion? Ready to vote? All right. Let's -- any public
7 comment?

8 **UNIDENTIFIED SPEAKER:** No.

9 **ADMINISTRATIVE LAW JUDGE KOPEK:** Okay. All right.
10 Let's take a vote. In Los Angeles, all those in favor of the
11 recommendation that OAH make no changes to the current
12 scheduling protocol? All in favor?

13 **MR. WRIGHT:** We have in favor Maureen Graves,
14 Margaret Dalton, Amy Foody and Bob Wright.

15 **ADMINISTRATIVE LAW JUDGE KOPEK:** And opposed? Any
16 abstentions?

17 **MR. WRIGHT:** Miho Murai in Los Angeles is.

18 **ADMINISTRATIVE LAW JUDGE KOPEK:** Okay. And
19 Sacramento?

20 **MS. BROUSSARD:** Could you reread the proposal?

21 **ADMINISTRATIVE LAW JUDGE KOPEK:** The recommendation
22 is that OAH make no changes to the current scheduling
23 protocols.

24 **MS. BROUSSARD:** So my question is, is if --

25 **MR. WRIGHT:** Who's this speaking, please?

1 **MS. BROUSSARD:** Peggy -- sorry. Peggy Broussard.
2 I get what would happen if you voted yes. That -- that would
3 be agreeing that they should make no changes.

4 My question is, is if you vote no, are you saying
5 that some changes should be made, all changes -- I just think
6 it's -- I have a problem because I agree that we already
7 voted on some changes -- on not taking into some changes. I
8 don't know what to do with my vote if I don't agree there
9 should be no changes.

10 **ADMINISTRATIVE LAW JUDGE KOPEK:** Well, I guess you
11 can always abstain, but other than --

12 **MR. REZOWALLI:** I think we're in the middle of
13 voting (inaudible).

14 **ADMINISTRATIVE LAW JUDGE KOPEK:** Yeah.

15 **MR. REZOWALLI:** I think the way it works is if this
16 is voted down, you make another motion.

17 **MS. BROUSSARD:** Okay.

18 **MR. REZOWALLI:** It's just once we get past -- once
19 we're halfway through the voting we --

20 **MS. BROUSSARD:** Okay. All right. I'm sorry. I
21 just --

22 **ADMINISTRATIVE LAW JUDGE KOPEK:** Okay. So all --
23 in Sacramento, all in favor?

24 **MS. BROUSSARD:** Of making no changes.

25 **ADMINISTRATIVE LAW JUDGE KOPEK:** Of making no

1 changes, leaving the scheduling protocols as they are? And I
2 see no hands.

3 And those opposed? We have Ms. Sherman, Ms.
4 Broussard.

5 And those abstaining? We have Ms. Bean, Mr.
6 Rezowalli, Ms. Gutierrez and Ms. English.

7 **MS. LEAVITT:** And Ms. Leavitt.

8 **ADMINISTRATIVE LAW JUDGE KOPEK:** I'm sorry. And
9 Ms. Leavitt. Okay. So it looks as though it passed in Los
10 Angeles and did not pass in Sacramento.

11 Any additional recommendations on this item?

12 **MR. WRIGHT:** Just a clarification. With -- if the
13 members don't vote, is that -- how is that counted?

14 **ADMINISTRATIVE LAW JUDGE KOPEK:** They abstain.
15 They don't vote. I'm looking at how many pass versus --
16 approve versus oppose.

17 **UNIDENTIFIED SPEAKER:** Don't abstentions follow the
18 majority?

19 **ADMINISTRATIVE LAW JUDGE KOPEK:** That's not how
20 they -- they may. I don't know in terms of --

21 **MR. WRIGHT:** They're excluded.

22 **ADMINISTRATIVE LAW JUDGE KOPEK:** -- Roberts, but
23 that's not what we're doing here.

24 **ADMINISTRATIVE LAW JUDGE KOPEK:** Okay.

25 **MR. WRIGHT:** So how many for and how many against

1 for the whole -- both north and Southern California?

2 **ADMINISTRATIVE LAW JUDGE KOPEK:** In Southern
3 California we had four --

4 **MR. WRIGHT:** Four.

5 **ADMINISTRATIVE LAW JUDGE KOPEK:** -- in favor. We
6 had none against. In Sacramento we had no one in favor and
7 two opposed. Okay.

8 **MR. WRIGHT:** Okay.

9 **ADMINISTRATIVE LAW JUDGE KOPEK:** Any further
10 recommendations on this item?

11 **MR. WRIGHT:** Miho Murai has a --

12 **MS. MURAI:** I mean, I kind of eluded to it before,
13 but is there any way, again -- like I just feel that we need
14 to talk about the continuance issue before we can make a
15 decision on this issue because to me -- yeah. I mean, it
16 just -- I just feel they're hand in hand, so I just feel like
17 if any -- is any way we can table the vote on it. I mean,
18 that's why I abstained because I can't make a vote. I mean,
19 I can't, you know --

20 **MR. WRIGHT:** Do you want to make a motion that we
21 do that?

22 **MS. MURAI:** That's what -- I mean, I guess can I
23 make a motion -- unless you want to make a motion to withdraw
24 your motion to re -- but I mean --

25 **MR. WRIGHT:** Procedurally I'm open to facilitate

1 the process, and I -- and if it -- if all those abstentions
2 need to review this next topic, then I'll be happy to make a
3 motion to, you know, put on hold or whatever and allow the
4 discussion of the -- the -- the continuancy issue.

5 **UNIDENTIFIED SPEAKER:** We already voted.

6 (Overlapping.)

7 **ADMINISTRATIVE LAW JUDGE KOPEK:** Wait a minute.

8 Excuse me.

9 **MR. WRIGHT:** Whatever.

10 **ADMINISTRATIVE LAW JUDGE KOPEK:** I'm asking --
11 let's take care -- are there any further recommendations on
12 item 3(a) in terms of initial scheduling protocols?

13 And if I understood correctly, there seems to be a
14 request that item 3(c), conducting the hearing on the initial
15 hearing date -- I guess I'm not sure -- but to the extent
16 that there's a request that we take an item out of order, I'm
17 not going to allow that. We're going to follow the agenda as
18 it is because this was noticed to the public that this was a
19 order that we were going to follow items.

20 And it's conceivable that someone is listening to
21 the through webcast, and they may want -- they may not be
22 listening now but they want to participate later in the
23 agenda, and I don't want to run the risk that we -- by moving
24 something forward we denied someone the opportunity to
25 participate.

1 So one last time. Is there any further
2 recommendations on item 3(a), the proposed changes to the
3 initial scheduling protocols?

4 **MR. WRIGHT:** Miho Murai.

5 **MS. MURAI:** I'm sorry. What was the vote of that?
6 So was the vote that there will no longer be changes? The
7 vote that passed.

8 **ADMINISTRATIVE LAW JUDGE KOPEK:** There were two
9 recommendations that passed. The first one was that OAH not
10 change district filed hearing only and district filed
11 mediation and hearing. And then there was a recommendation
12 that passed in Southern California that no changes be made to
13 the protocols, and that did not pass in Northern California.

14 Are there any additional recommendations on this
15 item? Okay. Let's move on. I'm sorry.

16 **UNIDENTIFIED SPEAKER:** (Inaudible).

17 **ADMINISTRATIVE LAW JUDGE KOPEK:** Okay. I had a
18 request for a short comfort break, so what I'd like to do is
19 let's break for five -- 10 minutes.

20 **UNIDENTIFIED SPEAKER:** Not long.

21 **ADMINISTRATIVE LAW JUDGE KOPEK:** Okay. Five
22 minutes. I'm a little concerned. I want to make sure we
23 have time to get through the agenda, so let's break for five
24 minutes and, at least by my watch, we'll be returning at a
25 quarter to 12.

1 (Off the record.)

2 **ADMINISTRATIVE LAW JUDGE KOPEK:** All right. Let's
3 call this meeting back to order after a short break. And we
4 are -- I just, again, want to indicate that we have all the
5 intended members are present in Los Angeles and in
6 Sacramento.

7 Let us turn now to item 3(b), which is the initial
8 continuance protocol. Currently, the Office of
9 Administrative Hearings has the policy that if there is an
10 agreed upon initial request for continuance that the new
11 dates would be scheduled within 90 days of the initial dates.

12 And quite frequently when we receive these initial
13 stipulated requests for continuances parties are, in fact,
14 requesting dates at that 90-day limit, and our policy had
15 been that if it's within 90 days we had granted them. But
16 what that does is it moves this big -- for example, when we
17 had a lot of filings at the end of last school year, that big
18 surge of filings basically moved 90 days down the road.

19 And it is a very, very difficult thing to manage
20 our calendar, and I also know that it must be a very, very
21 difficult thing for the practitioners and the families and
22 the school district personnel to manage the calendar.

23 So along the lines of the discussion that lead to
24 the last agenda item, the presiding judges and I discussed
25 our continuance protocol. And we are proposing that the

1 outside timeframe for these continuances would be -- instead
2 of 90 days, would be shortened to 60 days, so that when there
3 is a stipulated request -- initial request for a continuance,
4 whether the parties agree to the dates or they don't, that
5 the maximum length of time for that continuance would be 60
6 days.

7 So at this point I'm very anxious and curious to
8 hear the Advisory Committee's response to this. And Ms.
9 Broussard is -- can't wait to tell us what she thinks.

10 **MS. BROUSSARD:** Surprisingly. And I want to be
11 clear here. I'm only talking about the stipulated agreement.
12 If there is a stipulated agreement, not only do I not think
13 it's a good idea for a 60 day, but I actually think the 90
14 day should probably be pushed back a little.

15 For a stipulated agreement, there's often reasons
16 why both parties will agree to move a date beyond kind of
17 what seems like a natural deadline, and in -- in my practice
18 I think that's almost always because they're attempting to do
19 something in the best interest of the kid. They're
20 attempting to try something. They're attempting to try a
21 placement, have an interim settlement or something.

22 So to me, moving a stipulated agreement date to 60
23 days actually might decrease outcomes for students. If it's
24 non-stipulated, I think that's a different story, and I think
25 that kind of falls into another piece here.

1 **ADMINISTRATIVE LAW JUDGE KOPEK:** Okay.

2 **MR. WRIGHT:** Discussion from Southern California.
3 Maureen?

4 **MS. GRAVES:** Yes. I'd more inclined to raise it to
5 120. I agree with Peggy that there are reasons -- often
6 there are assessments that are going to occur. There's
7 something that may resolve the matter.

8 I also think that from the point of view of access
9 to counsel, it would be much harder to get lawyers if we
10 couldn't put things off as long as we currently can. I know
11 my calendar is usually very hard to get things in within the
12 90. We're usually on the very edge of that, and often giving
13 special circumstances as to why both sides want it to be
14 later.

15 I don't see the logic of thinking that a shorter
16 period would ease the congestion. It seems like it would
17 more increase the congestion. If people have 120 days or 90
18 days to spread their requests over, that would seem to lead
19 to less congestion than having to pack everything within 60
20 days, particularly if you're worried about summer filings or
21 spring -- May filings.

22 I don't think everybody wants to spend August in
23 hearing. And certainly, if people want to, they should be
24 able to. And there are many cases that do need to be
25 resolved before school starts, but for people who want to

1 start something new in the next school year, I don't see any
2 reason to push those, so I think this is a really --

3 **ADMINISTRATIVE LAW JUDGE KOPEK:** Anyone in Northern
4 California? Anyone else in Southern California?

5 **MR. WRIGHT:** This is Bob Wright. Again, anything
6 that puts additional pressure on students to represent
7 themselves and be given an opportunity to receive what
8 they're legally, you know, supposed to receive should not
9 happen. So I will agree with the extension seems more
10 logical to me.

11 And I -- the issue of filing in May -- the school
12 districts -- the employees are gone for the summer. How do
13 you have something in 60 days if none of the school staff is
14 around? I guess -- I don't know. Thank you.

15 **ADMINISTRATIVE LAW JUDGE KOPEK:** Any further
16 comments in Southern California? Okay. Ms. Gutierrez?

17 **MS. GUTIERREZ:** I agree with some of the things
18 that you're saying, Peggy, and someone from Southern
19 California. I also think that we probably all know that when
20 we have deadlines, we tend to do things because we have a
21 deadline. When we know -- when we're working together
22 towards settlement or whatever and we know that we can move
23 the deadline, I think we tend to not settling a case because
24 we know that we can move a deadline.

25 And sometimes I know when we're trying to work

1 towards settlement, you purposely agree to keep dates on
2 calendar to force us to work towards a resolution. So I kind
3 of feel that even though yes, it makes it easier in a way to
4 keep pushing these dates out to let us have more time to work
5 towards a resolution.

6 On the flip side, by actually having us stick
7 towards dates that are more efficient, I think will actually
8 get us to actually really work on -- and focus on resolving
9 cases, and I think we can see sooner resolution to some of
10 these disputes rather than caring these cases out for longer
11 periods.

12 **ADMINISTRATIVE LAW JUDGE KOPEK:** All right. Mr.
13 Rezowalli?

14 **MR. REZOWALLI:** Yeah. I think moving to 60 days,
15 that -- the summer break does not -- we do have a number of
16 cases that have come up, and more cases come up in the middle
17 of summer. 60 days doesn't span summer break for school
18 districts.

19 And so I don't have any problem -- it is kind of
20 problematic when I have a hearing and you're trying to get
21 people off of vacation in the school system -- parents, too,
22 I'm sure -- but I'm sure, but it's difficult to get --
23 typically if you have a number of witnesses -- to get them
24 all back.

25 **ADMINISTRATIVE LAW JUDGE KOPEK:** But, again, I just

1 want to clarify. All we're talking about right now is the
2 initial continuance period. So if we were to do it to 60
3 days and the parties agree and it's out 60 days and then --
4 there's nothing barring either party from requesting a
5 further continuance with the showing of good cause. So
6 again, I'm not -- I just wanted to remind folks of that.

7 **MR. WRIGHT:** Southern California --

8 **ADMINISTRATIVE LAW JUDGE KOPEK:** Ms. Broussard.

9 **MR. WRIGHT:** -- has a comment from Maureen Graves.

10 **ADMINISTRATIVE LAW JUDGE KOPEK:** Mr. Wright? Mr.
11 Wright?

12 **MR. WRIGHT:** I'm sorry.

13 **ADMINISTRATIVE LAW JUDGE KOPEK:** Ms. Broussard has
14 a comment. I'd like to finish Northern California, and then
15 we'll move back --

16 **MR. WRIGHT:** I'm sorry.

17 **ADMINISTRATIVE LAW JUDGE KOPEK:** -- to Southern
18 California.

19 **MS. BROUSSARD:** I see a real difference between if
20 it's not a stipulated agreement between (inaudible). I think
21 60 days makes great sense for the reason Marcy said and kind
22 of Kent said. That if somebody doesn't agree to it and
23 somebody else has good cause, I think -- I think pushing it
24 out farther than 60 days doesn't work towards resolution. If
25 somebody has got good cause and they want to move it, I like

1 60 days that it should be held because I think that better
2 honors the timeline.

3 My piece is, is for a stipulated continuance.
4 Hopefully, the parties are working together. There are
5 cases, I think, where -- where I've been in discussions where
6 we don't put it out that far because we know it needs to
7 settle and we want to work towards it.

8 But in the few cases where you want to try a
9 placement, you want to try something with a kid, you want to
10 do an assessment, I think knowing that you got maybe a couple
11 months to try it out makes more sense to me than a smaller
12 amount, which is I -- my -- I'm leaning towards liking better
13 60 days for non-stipulated and 120 days for stipulated.

14 **ADMINISTRATIVE LAW JUDGE KOPEK:** Okay. Anyone else
15 in Northern California? Ms. Sherman?

16 **MS. SHERMAN:** As a parent who has been through the
17 court system, I just want to put out there the word closure.
18 There is -- there is some peace in closure. Having to go
19 back time and time again for a continuance, taking time off
20 work, showing up to say it's continued, and then having to
21 wait -- that waiting game, that waiting game -- having peace
22 of mind and knowing there's an end coming, closure. Just I
23 kind of like the 60-day time period, coming from the parent
24 point of view, not the resource specialist point of view.
25 Just I want to put that word out there.

1 **ADMINISTRATIVE LAW JUDGE KOPEK:** Okay. Thank you.
2 All right. Southern California? Mr. Wright?

3 **MR. WRIGHT:** Excuse me, Judge. I apologize.
4 Earlier you had said you were going back and forth with
5 Northern and Southern California comment, but no -- not a big
6 deal.

7 I wanted to -- I think everyone on the Committee --
8 two of the members anyway -- wanted comment, and also the
9 public wants to comment. So I wanted to know if it will be -
10 - when is the appropriate time to allow public comment on
11 this item?

12 **ADMINISTRATIVE LAW JUDGE KOPEK:** What I'd like to
13 do is let's finish with the Advisory Committee members, and
14 then -- then we can ask for public comment.

15 **MR. WRIGHT:** Thank you.

16 **ADMINISTRATIVE LAW JUDGE KOPEK:** Okay.

17 **MR. WRIGHT:** So Maureen.

18 **MS. GRAVES:** This is Maureen Graves. I agree that
19 we all have a tendency toward procrastination, but on the
20 other hand from the parent point of view, parents don't want
21 things put off, so they exert some pressure on clients.

22 Also, school districts know that the longer
23 something is put off, the more attorney's fees are going to
24 go up in the meantime, which somewhat encourages early
25 settlement on their part.

1 I think that when -- the idea that it's really
2 great for us all to get on the case right after we file it is
3 problematic and that that pushes up fees at the beginning,
4 and fees often become a major obstacle to resolution. So I
5 think if there's something that can be tried that may make
6 the problem go away, I think it makes a lot more sense to try
7 that before lawyers start doing a lot of work.

8 The idea that we can always come back for good
9 cause, I mean, that makes our calendars extremely hard to
10 manage. We think that something -- we think we're going to
11 have good cause. We think it will go away, but we don't
12 know, and then we can't book other things in the meantime.
13 That would lead to more motion practice, more hassles for OAH
14 and more expense.

15 And I think this proposal of 60 days would also
16 have a different impact on the parent bar and parent access
17 to counsel versus the district bar and district access to
18 counsel. Most parent practitioners are in solo practice or
19 in small firms; whereas, districts are much more able to say
20 well, okay, if the hearing is in 60 days, we'll assign it to
21 somebody else. And I know districts don't like reassigning
22 things to a lawyer that they haven't worked with, but it's
23 something they can do. It's not something that parent
24 lawyers can typically do.

25 **MR. WRIGHT:** Miho.

1 **MS. MURAI:** I was just going to agree with Ms.
2 Broussard because I do think there is a difference between a
3 stipulated and unstipulated continuance. And I -- I would
4 agree that in -- I believe in an unstipulated continuance a
5 60 day is better so that there is -- you know, there is a --

6 **MR. WRIGHT:** Maureen.

7 **MS. GRAVES:** Yeah. My understanding would be that
8 if somebody asks for their right for a timely hearing, then
9 they ought to be able to get that a lot sooner than 60 days.
10 If there's no stipulation, OAH needs to set timelines much
11 faster than that.

12 **ADMINISTRATIVE LAW JUDGE KOPEK:** Okay. Mr.
13 Rezowalli.

14 **MR. REZOWALLI:** Just a point of clarification here.
15 We're not speaking to a particular motion, unless somebody
16 has made a motion. I didn't hear it. We're having some
17 discussion about it, but (overlapping).

18 **ADMINISTRATIVE LAW JUDGE KOPEK:** Well, the only --
19 the only -- the item we're discussing on is OAH's proposal,
20 which is that -- that the time be moved from 90 to 60 days.
21 So I was -- I haven't heard any recommendations, although,
22 there's been sort of an alternative suggested.

23 So at least what I was thinking, unless there was a
24 recommendation proposed, that we go ahead and vote on the OAH
25 proposal, and then I would ask if there were any

1 recommendations, but it's up to the members.

2 **UNIDENTIFIED SPEAKER:** That's a good idea to me.

3 **ADMINISTRATIVE LAW JUDGE KOPEK:** Okay. Any further
4 discussion on OAH's proposal to move -- to shorten --

5 **MR. WRIGHT:** Southern California.

6 **ADMINISTRATIVE LAW JUDGE KOPEK:** -- timeframe. I'm
7 sorry?

8 **MR. WRIGHT:** Southern California.

9 **ADMINISTRATIVE LAW JUDGE KOPEK:** Oh, public.

10 **MR. WRIGHT:** Miho.

11 **ADMINISTRATIVE LAW JUDGE KOPEK:** Okay.

12 **MS. MURAI:** I guess I would just make a
13 recommendation then that for unstipulated continuances that
14 OAH moves the time from 60 days to 90 days, but for
15 stipulated continuances the timeframe does not change.

16 **ADMINISTRATIVE LAW JUDGE KOPEK:** Okay. Did I
17 mishear you? I thought you --

18 **UNIDENTIFIED SPEAKER:** No. You said --

19 **UNIDENTIFIED SPEAKER:** You said the opposite.

20 (Overlapping.)

21 **MS. MURAI:** Okay. I'm sorry the opposite. I'm
22 tired. Sorry.

23 **ADMINISTRATIVE LAW JUDGE KOPEK:** Okay. Could you
24 repeat it again, please?

25 **MS. MURAI:** Okay. So for -- so the time -- okay.

1 Sorry. Sorry. Okay. So leave it for 90 days for stipulated
2 continuances, but 60 days -- move it to 60 days for
3 unstipulated continuances.

4 **ADMINISTRATIVE LAW JUDGE KOPEK:** Okay. Is there a
5 second?

6 **MR. WRIGHT:** Maureen.

7 **ADMINISTRATIVE LAW JUDGE KOPEK:** Oh, wait.

8 **MR. WRIGHT:** Maureen Graves had a comment.

9 **MS. GRAVES:** I guess I have a question. Is there
10 currently a timeline of that sort for unstipulated? I
11 thought that was a case by case -- somebody would make a
12 motion, and OAH would decide what the good cause justified.
13 I don't think there's a timeline on unstipulated continuances
14 or that there should be.

15 **MR. WRIGHT:** Judges?

16 **ADMINISTRATIVE LAW JUDGE KOPEK:** Ms. Graves, I'm --
17 is that a comment? I'm not sure.

18 **MR. WRIGHT:** It's a question.

19 **ADMINISTRATIVE LAW JUDGE KOPEK:** What I'm asking
20 for right now is whether there is a second on the
21 recommendation that the maximum continuance for a stipulated
22 continuance be 90 days and for an unstipulated request for
23 continuance 60 days. Is there a second? Hearing no second -
24 -

25 **MR. WRIGHT:** I'll make a second for that. I'm

1 sorry. I -- I wanted to comment that if Maureen Graves says
2 there is no stipulation for a non, why we have to change
3 something that's not in effect. I don't --

4 **ADMINISTRATIVE LAW JUDGE KOPEK:** Wait. Excuse me,
5 Mr. Wright. Have you seconded the recommendation or not?

6 **MR. WRIGHT:** No. I have not.

7 **ADMINISTRATIVE LAW JUDGE KOPEK:** Okay. Is there
8 any second to the recommendation? Okay. Hearing none.

9 We are back to the initial proposal, which is that
10 60 days be the maximum continuance of -- the maximum time
11 period for continuances.

12 **UNIDENTIFIED SPEAKER:** For the initial hearing
13 date.

14 **ADMINISTRATIVE LAW JUDGE KOPEK:** Of the initial
15 hearing days.

16 **MS. BROUSSARD:** I'd like to make a motion.

17 **ADMINISTRATIVE LAW JUDGE KOPEK:** Okay. Ms.
18 Broussard.

19 **MR. WRIGHT:** Could we have public comment before we
20 make a motion?

21 **ADMINISTRATIVE LAW JUDGE KOPEK:** No. Because what
22 we need to do is we need to have comment from the members
23 about the motion and then we will have public comment. Ms.
24 Broussard.

25 **MS. BROUSSARD:** I'd like to move that when a

1 continuance is requested and it is not stipulated that the
2 timeline for rescheduling the hearing be moved to 60 days.
3 And if there is stipulated continuance, that that timeline be
4 increased to allow for a stipulation to extend out as far as
5 120 days.

6 **ADMINISTRATIVE LAW JUDGE KOPEK:** Okay. Is there a
7 second to that motion? Hearing no second --

8 **MS. LEAVITT:** I'll second.

9 **ADMINISTRATIVE LAW JUDGE KOPEK:** Oh, okay. So
10 seconded by Ms. Leavitt. Okay. Is there further discussion?
11 Any public comment?

12 **MR. WRIGHT:** Southern California done with
13 comments?

14 **ADMINISTRATIVE LAW JUDGE KOPEK:** Northern
15 California?

16 **MS. GUTIERREZ:** Sorry.

17 **ADMINISTRATIVE LAW JUDGE KOPEK:** Wait. Sorry. Ms.
18 Gutierrez would like to speak.

19 **MS. GUTIERREZ:** Sorry, Peggy. My discussion would
20 be that 120 days is just too long. I just think that we just
21 eat up time, and we would not really be working toward
22 resolution because we know that we're going to procrastinate
23 and keep pushing it out to the last minute. And if we can
24 force each other to get this done within 60 days, I think
25 we'll do it. I really do.

1 **ADMINISTRATIVE LAW JUDGE KOPEK:** Any member --

2 **MR. WRIGHT:** And Maureen Graves has more comment
3 down here when that's good.

4 **ADMINISTRATIVE LAW JUDGE KOPEK:** Okay. Member
5 discussion in Southern California, Ms. Graves?

6 **MS. GRAVES:** Okay. I guess I would repeat my
7 question. My understanding is that if there is not a
8 stipulation on a continuance and somebody opposes the
9 continuance, then OAH will determine whether there's good
10 cause and to what point there's good cause for a continuance.

11 So I'm concerned that if we put it 60 in there
12 that's going to become a default position, and I think it
13 should often be shorter than 60.

14 **UNIDENTIFIED SPEAKER:** Isn't it currently 90?

15 **UNIDENTIFIED SPEAKER:** Yeah. It's currently 90.

16 **UNIDENTIFIED SPEAKER:** For stip --

17 **MS. GRAVES:** For non --

18 **UNIDENTIFIED SPEAKER:** For a non-stipulated, I
19 think that they still set it within -- I think the guideline
20 is still the same.

21 **ADMINISTRATIVE LAW JUDGE KOPEK:** It's -- for
22 everything --

23 **UNIDENTIFIED SPEAKER:** 90 days.

24 **ADMINISTRATIVE LAW JUDGE KOPEK:** Right. For every
25 continuance -- for the initial continuance, stipulated or

1 not, the outside timeframe is 90 days. If there is no
2 agreement from the parties on the dates, then it -- OAH has
3 the discretion, but the discretion always is to go out to 90
4 days, so it's --

5 **MS. GRAVES:** Okay. I would be for that, I guess,
6 if OAH thinks it can do that. That doesn't seem to be
7 consistent to the right to a swift hearing.

8 **UNIDENTIFIED SPEAKER:** That's why I said 60 days.

9 **MR. WRIGHT:** More comment here. Amy Foody?

10 **MS. FOODY:** Yeah. This is Amy Foody. One of my
11 concerns with extending the timeline beyond the 90 days is 90
12 days gives the school district summer, and that's practically
13 three months. It just extends the time in which if the -- on
14 the -- even the student's side, if that student requires some
15 services or a decision needs made so the student gets
16 services. You're keeping the student from getting what they
17 need.

18 Maureen brought up the point that the longer we
19 extend the more costly it is. And you know, school districts
20 -- this is getting costly. It's getting very costly for
21 everyone, so I have a concern with going beyond the 90. I
22 understand concerns with only being 60 as well, but just I
23 have a concern with it going beyond 90.

24 **ADMINISTRATIVE LAW JUDGE KOPEK:** Okay. Any further
25 -- initial discussion from members in Southern California?

1 How about Northern California? Okay.

2 Public comment in Northern California?

3 **MS. RANSOM:** Barbara Ransom, parent attorney. 90
4 days in the life of a first grader is way too long a time.
5 120 days is totally unreasonable. As a teacher and as a
6 parent's attorney, I would urge you not to have 120 day
7 option for any continuance. Every lawyer should be capable
8 of coming to the table way before 120 days.

9 And while I -- I totally understand an
10 unrepresented parent's position, I think that when we think
11 about in the life of a child, we have to cut back on any --
12 any move to extend time out that long.

13 **ADMINISTRATIVE LAW JUDGE KOPEK:** Okay. Any
14 additional comment -- public comment in Sacramento? Okay.
15 Public -- I'm sorry.

16 **MR. WRIGHT:** Okay. We --

17 **MS. BROUSSARD:** I just wanted to make one comment.
18 I guess my comment would be I -- I am actually one of the
19 biggest proponents of hearing dates happening on time on the
20 date they're originally scheduled and resolution
21 (overlapping) --

22 **MR. WRIGHT:** Who's speaking?

23 **MS. BROUSSARD:** Peggy Broussard. Sorry. One day
24 I'll remember to say that --

25 **MR. WRIGHT:** Thank you.

1 **MS. BROUSSARD:** -- before I talk. I'm actually a
2 great proponent of hearings going on the date they're
3 scheduled. I feel very strongly about that. And I guess as
4 long as the 90-day policy is still modifiable by a good cause
5 request by both parties, I can be more comfortable with that.

6 So -- so I guess I'll withdraw my motion at this --
7 can I do that once it's seconded or am I making things more
8 complicated? Oh, crap. Just leave it.

9 **MR. REZOWALLI:** You can probably (inaudible).

10 **UNIDENTIFIED SPEAKER:** I'll second that.

11 **MS. BROUSSARD:** I'll withdraw my motion.

12 **ADMINISTRATIVE LAW JUDGE KOPEK:** Okay. All right.
13 Ms. Broussard withdrew her motion, so that seems to be enough
14 for me to have the motion be withdrawn.

15 **MR. WRIGHT:** So we -- in Southern California,
16 Maureen Graves and the public still wanted to comment.

17 **ADMINISTRATIVE LAW JUDGE KOPEK:** Okay. I just want
18 to clear that with that motion withdrawn, we are back to the
19 original OAH proposal of moving it to 60 days for all initial
20 requests for continuances.

21 So Southern California, Ms. Graves, did you have
22 additional comment?

23 **MS. GRAVES:** I thought the motion was for uncontest
24 -- for stipulated requests?

25 **ADMINISTRATIVE LAW JUDGE KOPEK:** Ms. Broussard just

1 withdrew her motion.

2 **MS. GRAVES:** No. But I thought that the original
3 OAH motion was that where there's an uncontested request it
4 can be --

5 **MS. MURAI:** For any.

6 **ADMINISTRATIVE LAW JUDGE KOPEK:** No. The OAH
7 proposal is that for initial requests for continuance that
8 the continuance would be granted so that the new dates would
9 be within 60 days, rather than the current 90 days.

10 **MR. WRIGHT:** All requests.

11 **MS. MURAI:** And I'd like to move to take a vote on
12 that item.

13 **ADMINISTRATIVE LAW JUDGE KOPEK:** All right. Public
14 comment in Southern California?

15 **MR. WRIGHT:** I think we still have Committee
16 comment. Maureen Graves has something else to say.

17 **MS. GRAVES:** All right. Then I guess I would make
18 a -- I don't see the logic of any time -- of giving OAH 60
19 days to set something when one person is trying to insist on
20 their right to a prompt hearing and the other side lacks good
21 cause for a longer continuance.

22 I mean, I think that the -- the idea that, you
23 know, if you care about kids you want rapid due process
24 hearings is kind of crazy. You know, about, what, couple
25 hundred kids get such hearings a year out of a state with

1 680,000 students with special ed. I don't think any of us
2 sitting here think hearings are the optimal way to resolve
3 special ed situations.

4 So I think that we shouldn't shorten the timelines
5 for consented requests, and that we should probably lengthen
6 them. I think that where a party -- one party wants to go
7 forward quickly, they ought to be able to do that, including
8 students ought to be able to have hearings in the summer and
9 districts ought to have to make it happen.

10 **MR. WRIGHT:** I have a comment. Could we set it up
11 so that the student would have the option for the additional
12 time if they needed it and the district wouldn't have that
13 option because they've already got their attorneys in place?

14 **ADMINISTRATIVE LAW JUDGE KOPEK:** Okay.

15 **MS. GRAVES:** This is by consent.

16 **ADMINISTRATIVE LAW JUDGE KOPEK:** Excuse me.

17 **MR. WRIGHT:** I was just throwing out ideas.

18 **ADMINISTRATIVE LAW JUDGE KOPEK:** Okay. Excuse me.
19 We've had extensive discussion on the original proposal, and
20 what I would like to do now is ask whether -- I think that
21 the Committee has -- we're veering into something that
22 doesn't have to do -- that is off the original proposal.

23 So what I'd like to do is let's have a vote -- I
24 want to make sure that there's no more public comment, but
25 I'd like to have a vote on the OAH proposal. So is --

1 **MR. WRIGHT:** Southern California has public comment

2 --

3 **ADMINISTRATIVE LAW JUDGE KOPEK:** Okay.

4 **MR. WRIGHT:** -- so you're clear.

5 **ADMINISTRATIVE LAW JUDGE KOPEK:** All right. So do

6 we --

7 **MR. WRIGHT:** Tell me when.

8 **ADMINISTRATIVE LAW JUDGE KOPEK:** -- have public
9 comment on the original proposal to shorten the time frame of
10 initial continuances from 90 days to 60?

11 **MR. WRIGHT:** In Southern California, we do.

12 **MS. HALL:** We do. This is Julie Hall (phonetic)
13 speaking. I'm with LA Unified School District, and as you
14 know, we have a high volume of due process hearings. Our
15 experience is that the bulk of our initial continuances are
16 jointly agreed to with -- that's with the non-represented
17 parent or with opposing counsel because they also have high
18 volume of cases. And if there's another request, then that's
19 another matter.

20 As far as initial continuances where one of the
21 parties wants the timeline to be shorter and the other has a
22 different rationale based on their calendaring or what-not,
23 then I -- I believe that that should be based -- that
24 decision should be based on good cause and not arguments that
25 are presented back and forth by the party versus a default

1 60-day time line.

2 **MR. WRIGHT:** Is that unanimous for the four of you?

3 **UNIDENTIFIED SPEAKER:** Yes.

4 **UNIDENTIFIED SPEAKER:** Yes.

5 **UNIDENTIFIED SPEAKER:** Yes.

6 **MR. WRIGHT:** Okay. That's unanimous from the --

7 **ADMINISTRATIVE LAW JUDGE KOPEK:** Okay. Anything
8 else?

9 **MR. WRIGHT:** -- Los Angeles School District.

10 **ADMINISTRATIVE LAW JUDGE KOPEK:** Public comment in
11 Southern California? And any further public comment in
12 Northern California? Okay.

13 Let's go ahead and take a vote on the original OAH
14 proposal, and let's start in Sacramento. All those in favor
15 of shortening the time period for initial requests for
16 continuances from 90 -- maximum of 90 days to a maximum of 60
17 days. All in favor? And we have Sherman, Gutierrez and
18 Bean. All opposed?

19 **UNIDENTIFIED SPEAKER:** You forgot English.

20 **ADMINISTRATIVE LAW JUDGE KOPEK:** Oh, I'm sorry.
21 And English. Okay. And opposed? We have Rezowalli, Leavitt
22 and Broussard. Anyone abstaining? No abstentions.

23 All right. In Los Angeles, all those in favor? Is
24 there anyone in favor?

25 **MR. WRIGHT:** No one in favor in Los Angeles, Judge.

1 **ADMINISTRATIVE LAW JUDGE KOPEK:** Okay. So all
2 those opposed?

3 **MR. WRIGHT:** We have four members opposed, Margaret
4 Dalton, Maureen Graves, Miho Murai and Bob Wright.

5 **ADMINISTRATIVE LAW JUDGE KOPEK:** And any
6 abstention?

7 **MR. WRIGHT:** We have one abstention, Amy Foody.

8 **ADMINISTRATIVE LAW JUDGE KOPEK:** Okay. All right.
9 So it does not pass in either Northern or Southern
10 California. All right.

11 Do we have any recommendations on this agenda item
12 that any of the members would like to make? Okay. Hearing
13 none, let's move on.

14 Item C is conducting the hearing on the initial
15 hearing date. And this agenda item was proposed by Ms.
16 Broussard, so I will turn the floor over to you.

17 **MS. BROUSSARD:** I feel very, very strongly about a
18 school district's right to have the hearing done in the
19 timelines prescribed by the law. And I know that in some
20 cases there are continuances that are agreed to, but in some
21 cases they are not. And I'm feeling very strongly right now
22 that there is a feeling that that initial date is never going
23 to go for anyone, and that if you want your hearing on that
24 date, you're actually at a disadvantage.

25 And furthermore, we know -- I don't know what

1 percentage -- 99 percent of hearings are not going to be a
2 one-day hearing date. So what's part and parcel with this --
3 conducting hearing on the initial date -- is ensuring that
4 there's a number of days that are scheduled for hearing.

5 So when I was thinking about this, thinking about
6 kind of practical solutions, it seemed to me -- and I
7 understand there are scheduling issues with OAH and that
8 there's a lot of stuff, but that at some point during the
9 timeline, whether it's right after mediation or somewhere, it
10 seemed to make sense to me to be able to notify OAH that you
11 are intending to go forward on your hearing date and that you
12 needed additional hearing dates.

13 I understand kind of why it would be difficult for
14 OAH to automatically schedule all hearings the minute they
15 got filed for X number of days. But if at some point you go
16 to mediation, you're at mediation, you don't settle the case,
17 you know you're going to go forward, then I think there ought
18 to be a way to contact OAH and say planning on going forward.
19 I think I'm going to need five or six days, or whatever it
20 is, and have those scheduled without it being treated like
21 the first day is set in stone and every other day is like
22 rolling the dice. And there's kind of an automatic
23 continuance that ends up getting granted for days past the
24 first day, so that was my thought process.

25 **ADMINISTRATIVE LAW JUDGE KOPEK:** Okay. I guess

1 what I'd like to do, if it's all right with you, Ms.
2 Broussard, is explain OAH's current policy about that initial
3 hearing date because I know that there has been some
4 confusion and at different times during the length of the
5 contracts that we've had there have been some changes in
6 this.

7 But currently the view is that a hearing that has
8 not been continued will begin on the initial hearing date and
9 will continue until it is finished, and that is the current
10 view.

11 There had been a time when parties would, upon
12 filing, request additional hearing dates, and we were
13 granting that request, but for a variety of reasons that I
14 need not go into it really became a problem.

15 So, you know, as I just indicated currently, if you
16 have a hearing date for one day, the hearing -- OAH expects
17 that that hearing will begin on that day, and that judge is
18 available to continue that hearing until it is finished.

19 **UNIDENTIFIED SPEAKER:** I just --

20 **ADMINISTRATIVE LAW JUDGE KOPEK:** I know there have
21 been times when perhaps some of the Administrative Law Judges
22 during a prehearing conference may not have correctly
23 articulated OAH's policy. And when I learned about that, we
24 took measures to make sure that everybody understood what the
25 policy was.

1 And when Ms. Broussard approached me about this
2 agenda item, I thought this would be a great time to make
3 sure that everybody in the community understood that that was
4 what the current policy is. Okay. So I didn't mean to
5 interrupt.

6 **MS. BROUSSARD:** That was great.

7 **ADMINISTRATIVE LAW JUDGE KOPEK:** Anything further?

8 **MS. BROUSSARD:** That's what I was going to say.

9 **ADMINISTRATIVE LAW JUDGE KOPEK:** Okay. So I guess
10 the only thing I need clarification on is it sounded like you
11 were suggesting or recommending that there be a process by
12 which folks could let us know how many dates go? And I guess
13 what I'm wondering is given that the current policy is you
14 start on day one and you have until you finish, whether this
15 mechanism by which parties would indicate to us yes, we're
16 going, and we need additional dates. Is that part of your
17 recommendation?

18 **MS. BROUSSARD:** It is.

19 **ADMINISTRATIVE LAW JUDGE KOPEK:** Okay.

20 **MS. BROUSSARD:** And it is because I think it's fair
21 at some point for OAH in scheduling -- I mean, if I'm -- I
22 was just trying to think of the practical matters of it, and
23 I don't want it to be changed again in four months because it
24 didn't work.

25 So it seems to me from a scheduling standpoint, at

1 some point I have at least an estimate of how many days it's
2 going to take for hearing. Sometimes there are cases with
3 much longer and sometimes there are cases with a much
4 shorter.

5 And if we wait until the prehearing conference -- I
6 mean, I guess we can all -- I don't -- it would be hard for
7 me to keep my calendar clear. If I had a case starting
8 November 15th -- I don't know what day of the week that is --
9 but if I had a case starting November 15th, it's much easier
10 for me -- once I'm past mediation and realize it's probably
11 going to go, it would be great to be able to have a
12 conversation saying, you know, I kind of think five and have
13 opposing counsel say I got to say I think it's eight.

14 Then I don't have to keep my calendar clear until
15 December 15th because if it's -- if -- if what I'm held is
16 day-to-day forever, I might have other hearings scheduled a
17 week or two later. I mean, I just think at some point some
18 clarity about how long we expect it to go just allows for you
19 guys to schedule the judges and allows me to make sure that
20 my schedule is freed up for what the expected number of days
21 is because I may have another hearing set in two weeks and
22 not know, for instance, that Marcy thinks that it's a 12-day
23 hearing.

24 **ADMINISTRATIVE LAW JUDGE KOPEK:** So what are you
25 proposing?

1 **MS. BROUSSARD:** I'm proposing that after -- make
2 something up -- so that two weeks prior to the hearing that
3 the parties -- well, if a case is going forward, that a party
4 may contact OAH and request that a hearing be set for a given
5 number of days and that the other party be given time to
6 respond to that, so that the hearing can be set for X number
7 of days so people know what to do with their calendars.

8 **ADMINISTRATIVE LAW JUDGE KOPEK:** Okay. So as I
9 understand it, you recommend that two weeks prior to a
10 hearing the party may submit a request to OAH to set the
11 matter for a specific number of days, and then the other
12 party be given -- I'll just make this the usual three days to
13 respond.

14 **MS. BROUSSARD:** And it's not whether the hearing
15 goes. It would literally be how many days they expect the
16 hearing to last.

17 **ADMINISTRATIVE LAW JUDGE KOPEK:** Okay. Okay. And
18 is there a second?

19 **MR. WRIGHT:** I have some discussion in Southern
20 California.

21 **ADMINISTRATIVE LAW JUDGE KOPEK:** Discussion.

22 **MR. WRIGHT:** I think we have at least three
23 members. So Miho is first.

24 **MS. MURAI:** I want to say that I -- I mean, just to
25 -- just so I have you correct, Judge Kopek, you're saying

1 that the current policy is that if a hearing has not been
2 continued, it will occur on the initial date?

3 I was told several times -- because I've always
4 advocated when I have a hearing date I want to go forward,
5 and I was told by judges, several judges, that no, you know -
6 - you know the rule. That your hearing is not going to be a
7 one-day hearing, so you're going to get an automatic
8 continuance, and so that's never applied for me.

9 And I'm like, okay, well, let's at least schedule
10 it. Let's go forward on that day, and then we can -- if your
11 calendar isn't available until a month, I want to still go on
12 that day. And they -- they're like no, we're not going to do
13 that. And I even had case law showing that in the past it's
14 been done.

15 So my experience has never been -- and then
16 actually I was laughed at by one judge saying that don't you
17 know the real rule that no, if it's not -- you know that if
18 it's not a one-day hearing -- either you make a decision that
19 it's going to be that one-day hearing or, you know, you're
20 going to get a 90-day continuance so I --

21 **ADMINISTRATIVE LAW JUDGE KOPEK:** Ms. Murai, all I
22 can do is -- I mean, again, depending upon when the timeframe
23 for this was, I don't -- you know, what I can say is I've
24 been in place as the division PJ since October, just about a
25 year ago, and the policy has been as I've articulated it. As

1 I said, when I became aware that there was some lack of
2 clarity and consistency, I have tried to make things
3 consistent.

4 So I ask you if you would be so kind as to let me
5 know, either give me a call or send me an email, in terms of
6 who was involved and when these happened. Again, I just want
7 to make sure that all the judges are in line. The current
8 policy is that the matter -- if there are is no continuance,
9 the parties are to begin on the initial hearing date until it
10 ends.

11 **MS. MURAI:** I guess --

12 **ADMINISTRATIVE LAW JUDGE KOPEK:** I mean, within
13 reason and control by the judge, of course, in terms of
14 length of hearing.

15 **MS. MURAI:** And I guess in line with my comment is
16 then -- again, is what I brought up before is that -- you
17 know, I mean, I've done trials in other cases. And if you
18 know it's going to be a five-day hearing, the scheduling
19 order is a five-day hearing.

20
21 And so there isn't going to be -- like I mean, I
22 understand Ms. Broussard's recommendation about that two
23 weeks, but I think that, you know, for us solo practitioners,
24 if we're trying to schedule our schedule -- and parents and
25 students, they want resolution, but they need to know which

1 dates to reserve.

2 And so I think if we're filing, we request a five
3 day, we know it's a five day, a five day is scheduled. And
4 it's not just one day, but it's that five day. If we resolve
5 it, then that can be taken off the calendar.

6 But I think that will encourage, you know,
7 settlement. I think that will encourage everybody to stick
8 to the deadlines and not just to, you know, take it for
9 granted that there's going to be a continuance.

10 **ADMINISTRATIVE LAW JUDGE KOPEK:** Okay. Again, Ms.
11 Murai -- and I guess to all the members -- we have -- we're
12 really running short on time. It's about 12:30, and I know
13 that this is a important, and so I really want to make sure
14 that people address the item before us.

15 And what we have before us is Ms. Broussard's
16 recommendation that two weeks prior to the hearing the
17 parties may tell OAH and request a specific number of hearing
18 dates, and the other party is given three days to respond and
19 then OAH will make a ruling. Does anyone have any comment on
20 that particular resolution?

21 **MR. WRIGHT:** Southern California. Margaret Dalton
22 and Maureen Graves. So Margaret first.

23 **ADMINISTRATIVE LAW JUDGE KOPEK:** Okay. Ms. Dalton.

24 **MS. DALTON:** Okay. Thank you. For simplicity
25 sake, I believe that this should be discussed at the PHC as

1 opposed to setting a two-week deadline and then three days to
2 respond, and it just sounds like a recipe for a lot of extra
3 paperwork, frankly, and time spent by OAH and, you know,
4 anything like that (inaudible) so I don't see why -- we used
5 to do it at the PHC. It seems like that's a good time to do
6 it to me, so that's my thought, Peggy.

7 **ADMINISTRATIVE LAW JUDGE KOPEK:** All right. Ms.
8 Graves.

9 **MR. WRIGHT:** Maureen.

10 **MS. GRAVES:** Yeah. One thing that I think used --
11 I am surprised that this is the policy. I had -- my
12 understanding of the policy had been like Miho's, so I -- and
13 I used to think that this was just a horrible idea and that
14 it would wreak havoc with our calendars.

15 However, as I see how the attempt to put timelines
16 on hearings in advance has worked out, I'm sort of thinking
17 of people who opposed timelines for withdrawal from
18 Afghanistan or Iraq. That if you set a timeline that people
19 will just wait you out.

20 And you know, when I have 30 minutes left to
21 examine a witness, I find that that witness becomes much more
22 able to evade questions for 30 minutes than they would be if
23 they knew the judge was going to let me go on until I got
24 them to answer the question.

25

1 So I think that the idea of having -- facing a
2 hearing that could go on forever is a pretty incentive to
3 settle. I think it has its merits. I would actually like to
4 try this for a little while with people knowing that that's
5 the procedure and see how it works.

6 And then if the parties can agree at mediation that
7 they're going to set particular timelines, that's the time --
8 or in some other way, I would like the mediation judge to be
9 able to call up OAH and say well, the parties can't settle
10 the case, but they can agree on eight days, so let's put it
11 down for eight days.

12 **ADMINISTRATIVE LAW JUDGE KOPEK:** And actually, Ms.
13 Graves, as to that point, that currently is permissible. You
14 know, if you're mediation and the case does not settle and
15 you know that the parties -- that the hearing is going to go
16 on, that is something perfectly acceptable. Hopefully, the
17 parties can agree and that will be the timeframe.

18 So Ms. Graves, what's not clear to me is are you
19 agreeing -- did you speak in support of Ms. Broussard's
20 recommendation that the two weeks prior to the hearing that
21 the parties then inform OAH and --

22 **MS. GRAVES:** No. I think I would rather have the
23 parties be able to set dates by consent and not have
24 additional motion practice on how long the hearing is going
25 to be. Just if the parties can't agree, then the hearing

1 starts and it goes until it's over.

2 **ADMINISTRATIVE LAW JUDGE KOPEK:** Any further
3 comment in Southern California --

4 **MR. WRIGHT:** Yes.

5 **ADMINISTRATIVE LAW JUDGE KOPEK:** -- by members?

6 **MR. WRIGHT:** Miho.

7 **MS. MURAI:** I would just say that if -- and if the
8 current policy that you're stating is not being implemented
9 that there's some kind of remedy. There's -- because -- I
10 mean, I mainly got the laughing and the scoffing from school
11 district attorneys, so I don't know if they don't know the
12 current policy, and then at a PHC they'll tell the judge, and
13 then the judges will agree with the school district and that
14 will be what happens.

15 So I don't -- I mean, if that is the current
16 policy, I'd like a bulletin to be presented, it to be told to
17 the school districts and all the judges, just so that -- I
18 mean, no offense, but I mean, just -- because if that is the
19 current policy, I would like -- I agree with the current
20 policy.

21 And you know, I don't think -- and I agree with
22 Margaret that I think it should be discussed at a PHC because
23 that's what normally happens at a PHC. There shouldn't
24 necessarily be any other additional paperwork procedure.

25 **ADMINISTRATIVE LAW JUDGE KOPEK:** Okay. Well, as to

1 a remedy, as I said, I am -- I'm doing what I can through the
2 PJs to make sure that everyone understands the policy. If
3 you, like with anything else, if you are having problems or
4 concerns in this area or other areas, by all means, please
5 contact me and let me know. Any further --

6 **MR. WRIGHT:** Maureen -- yes, Maureen Graves.

7 **MS. GRAVES:** Yes. I'd just like to agree with Miho
8 that this really deserves an announcement because I think
9 this is a major change in what I thought was the policy, and
10 it sounds like there are a lot of us in that position.

11 **ADMINISTRATIVE LAW JUDGE KOPEK:** Okay. And
12 Northern California.

13 **MR. WRIGHT:** And my comment -- Judge Kopek already
14 told us that some judges were giving the other information as
15 the rule, and so the OAH has -- has been provided --
16 presenting the other policy as the way it is. So to formally
17 revise that with a memo or, you know, something that's been
18 proposed seems really reasonable to me.

19 And procedurally, our note taker -- my battery is
20 running out and my cord is in my car down on the curb. So if
21 it's appropriate, when it's appropriate, to run down and get
22 my power pack, I think, is a -- needs to be addressed.

23 **ADMINISTRATIVE LAW JUDGE KOPEK:** Okay. Let's --

24 **MR. WRIGHT:** Oh, she'll do it by hand. She's doing
25 to handle that.

1 **ADMINISTRATIVE LAW JUDGE KOPEK:** Okay. What I'd
2 like to do is this. The item proposed by Ms. Broussard --
3 we're sort of getting a little bit off the topic. Is there
4 any further discussion that the policy be that two weeks
5 prior to the hearing a party can request additional hearing
6 dates and -- I'm sorry -- two weeks prior to the hearing a
7 party may request OAH to provide additional hearing dates,
8 and the other party will be given three days to respond.

9 Do we have any further comment on that in Northern
10 California? Do we have any public comment on this in
11 Northern California? Okay. Any comment --

12 **MS. RANSOM:** Just want --

13 **ADMINISTRATIVE LAW JUDGE KOPEK:** Okay. Ms. Ransom?

14 **MS. RANSOM:** What about two weeks or less? I mean,
15 is it --

16 **ADMINISTRATIVE LAW JUDGE KOPEK:** A member of the
17 public is not appropriate to propose an amendment.

18 **MS. RANSOM:** Right.

19 **ADMINISTRATIVE LAW JUDGE KOPEK:** Okay. But it
20 sounds like that would be your recommendation?

21 **MS. RANSOM:** Yes.

22 **ADMINISTRATIVE LAW JUDGE KOPEK:** Okay. Any further
23 public comment in Sacramento? Any member comment in Los
24 Angeles on Ms. Broussard's motion or item? I'm sorry. Ms.
25 Broussard?

1 **MS. BROUSSARD:** I guess I would just like to say
2 that I think two weeks or less -- I'd like to -- I'm not
3 really good at the Robert's Rules though -- but two weeks or
4 less to me would also include the PHC, but would also allow
5 parties who wanted a little finality prior to the five days
6 before hearing, the option to do it a little earlier.

7 So you wouldn't have to do paperwork, if you wanted
8 to do it at the PHC, but it would also allow you the
9 opportunity to get those dates nailed down a little earlier
10 if you needed to for witnesses or for whatever.

11 **ADMINISTRATIVE LAW JUDGE KOPEK:** Okay. So you're
12 okay with it being two weeks or less?

13 **MS. BROUSSARD:** Yeah.

14 **ADMINISTRATIVE LAW JUDGE KOPEK:** Okay. And
15 since --

16 **MR. WRIGHT:** Southern California comment
17 (overlapping).

18 **ADMINISTRATIVE LAW JUDGE KOPEK:** Wait a minute.
19 Okay.

20 **MS. DALTON:** Sorry.

21 **ADMINISTRATIVE LAW JUDGE KOPEK:** Okay. Southern
22 California on this motion. It's been -- now been slightly
23 revised -- or the item -- the two week or less part of the
24 hearing. The parties will inform OAH of additional hearing
25 dates, and the other party will be given an opportunity to

1 respond. Ms. Dalton?

2 **MS. DALTON:** Yes. Just a comment, which is
3 assuming and believing that the policy is as you stated it.
4 Then I don't think -- I think by passing something like this,
5 we are suggesting a change to the current policy, even if we
6 weren't aware of it, so that's my concern.

7 **ADMINISTRATIVE LAW JUDGE KOPEK:** Okay.

8 **MS. DALTON:** If there's a policy that allows this
9 already, then great.

10 **ADMINISTRATIVE LAW JUDGE KOPEK:** Anything further
11 from the members in LA? How about public comment in LA?

12 **MR. WRIGHT:** Yes, we do.

13 **MS. HALL:** This is Julie Hall. One comment I have
14 is that in my experience two weeks prior to the hearing, at
15 least with initial dates, is not probably going to work
16 logistically because of the closest of mediation and PHC
17 initially anyway.

18 **ADMINISTRATIVE LAW JUDGE KOPEK:** Okay. Any further
19 public comment in LA? All right. Let's take a vote.
20 Southern California. All those in favor that two weeks or
21 less prior to the hearing the parties may tell OAH and
22 request additional hearing dates, and the other party will
23 respond -- have three days to respond and OAH will make a
24 ruling. All in favor? Anyone?

25 **MR. WRIGHT:** No one in Southern California is

1 voting in favor.

2 **ADMINISTRATIVE LAW JUDGE KOPEK:** Okay. All
3 opposed?

4 **MR. WRIGHT:** Unanimous with Margaret Dalton,
5 Maureen Graves, Miho Murai, Amy Foody and Bob Wright.

6 **ADMINISTRATIVE LAW JUDGE KOPEK:** Okay.

7 **UNIDENTIFIED SPEAKER:** Can I ask a quick question?
8 Did that a second, the motion?

9 **ADMINISTRATIVE LAW JUDGE KOPEK:** Well --

10 **UNIDENTIFIED SPEAKER:** I'm sorry.

11 **ADMINISTRATIVE LAW JUDGE KOPEK:** Because this was
12 an agenda item presented by a member, it's sort of --

13 **UNIDENTIFIED SPEAKER:** Okay.

14 **ADMINISTRATIVE LAW JUDGE KOPEK:** -- treating it
15 differently than a discussion that was -- an item from OAH
16 and then an amendment --

17 **UNIDENTIFIED SPEAKER:** Got you.

18 **ADMINISTRATIVE LAW JUDGE KOPEK:** -- to the
19 recommendation so --

20 **MR. WRIGHT:** Excuse me, Judge. Last meeting I
21 presented an agenda item. It didn't get seconded, and we
22 never voted on it.

23 **ADMINISTRATIVE LAW JUDGE KOPEK:** Is that right?

24 **MR. WRIGHT:** Yes.

25 **MS. MURAI:** Yeah. We didn't vote on mine.

1 **MR. WRIGHT:** Or Miho Murai's as well so --

2 **ADMINISTRATIVE LAW JUDGE KOPEK:** Oh, I'm sorry
3 about that.

4 **MR. REZOWALLI:** I thought there was a second on the
5 original motion. I wasn't hearing it on the (overlapping).

6 **ADMINISTRATIVE LAW JUDGE KOPEK:** Okay. Look, I'm
7 really sorry. I thought that I was following the same --
8 same -- so let's go back. Is there a second on Ms.
9 Broussard's agenda item? No? All right. Then let's go
10 forward. Again, thank you very much for bringing that to my
11 attention. I'm really sorry about that.

12 Okay. The next item, 3(d), the impact of
13 continuance on the decision timeline. And this is another
14 item from Ms. Broussard.

15 **MS. BROUSSARD:** My understanding is the current
16 policy is to grant a continuance -- so the case was filed on
17 September 1st and initially scheduled for hearing on October
18 15th, and a continuance was requested on September 15th. The
19 decision -- the time for the decision would be extended by
20 the date the continuance was granted, not from the original
21 hearing date to the new hearing date.

22 And I believe very strongly that -- and so it's
23 resulted, at least in several of my cases, when we agree to a
24 continuance early in an obscene amount of time between the
25 time of the hearing and the time the decision is due, because

1 OAH is currently adding in the month or so between the time
2 that the continuance was granted and the time of the initial
3 hearing day.

4 So I propose that when a continuance is granted the
5 impact on the decision timeline be only from the date of the
6 initial hearing to the date of the new hearing, not from the
7 date the continuance was granted. Did that make sense?

8 **UNIDENTIFIED SPEAKER:** Can you do a visual aide?

9 **MS. BROUSSARD:** I know.

10 **ADMINISTRATIVE LAW JUDGE KOPEK:** Okay. Let me --
11 let me explain what we currently do because I -- I'm not sure
12 I follow this.

13 **MS. BROUSSARD:** Okay.

14 **ADMINISTRATIVE LAW JUDGE KOPEK:** What OAH currently
15 does is for a student filed case you have the 30-day
16 resolution session or -- so the clock -- the 45 time -- day
17 time line clock starts on the 31st day from filing in the
18 student case.

19 In a district filed case, because there is no
20 resolution session, it starts on the day -- the first -- you
21 know, it's filed on one day, and the first -- the day after
22 filing is the first day of the 45-day clock.

23 So I understand it in my simple mind as the clock
24 being stopped or the clock going. So we have the clock
25 starting either on the 31st day after filing or the first day

1 after filing, depending on who files, and then OAH stops the
2 clock on the date the first continuance is granted. Okay.

3 So we take the view that if the continuance is
4 requested and granted in a student filed case during that 30-
5 day resolution session, the clock is stopped, and it does not
6 start again until the first day of hearing.

7 **UNIDENTIFIED SPEAKER:** Until what? The first --

8 **MR. WRIGHT:** Say the last sentence again, please.

9 **ADMINISTRATIVE LAW JUDGE KOPEK:** Wait. And Ms.
10 Broussard, this is what makes you crazy, right?

11 **MS. BROUSSARD:** Yes.

12 **ADMINISTRATIVE LAW JUDGE KOPEK:** Okay.

13 **MS. BROUSSARD:** Absolutely what makes me crazy.

14 **ADMINISTRATIVE LAW JUDGE KOPEK:** Okay. So if you
15 have it currently -- if you have a continuance that is
16 granted during the 30-day resolution session, OAH stops the
17 clock and it -- because we stop the clock when the
18 continuance is granted, regardless of when it's granted, and
19 we start it again on the first day of hearing.

20 **UNIDENTIFIED SPEAKER:** So it doesn't matter if the
21 continuance is granted during the 30-day resolution period or
22 not?

23 **ADMINISTRATIVE LAW JUDGE KOPEK:** Right.

24 **UNIDENTIFIED SPEAKER:** Okay.

25 **ADMINISTRATIVE LAW JUDGE KOPEK:** So the first

1 scenario, which Ms. Broussard is objected to, I believe,
2 strenuously, is that if a -- basically, an early continuance.
3 You know, you get your initial scheduling order. You see
4 that date. You know it's not going to go. You get on the
5 phone. You get your stipulated continuance or not, and
6 you're within that 30-day time period during the resolution
7 session.

8 The date of the continuance stops the clock, which
9 means that basically that the 40 -- the clock never started
10 so -- for OAH's purposes. So that at the first day of
11 hearing, the 45-day clock starts, so that the first -- at the
12 end of the first day of hearing the judge has 44 days. The
13 second day, 43 days, etcetera.

14 If the continuance -- now, if you have a district
15 filed case, the clock is moving. So let's say five days
16 after filing a continuance is granted. Those five days are
17 counted, and then the continuance is granted. The clock
18 stops. The hearing starts. Each hearing day counts, and
19 then that's how the judge decides the timeframe.

20 Same thing for the student filed case. Let's say
21 you go 45 days after filing. The clock started after the
22 resolution session, so you now have 15 days that we would say
23 you -- have gone on the clock, so at the end -- at the
24 beginning of the hearing, you have 30 days left. Okay.
25 That's the current policy. And what would you be proposing?

1 **MS. BROUSSARD:** So if everybody wants to follow
2 along with me, pull out your proposed schedule -- scheduling
3 protocol table from earlier.

4 If we look under student filed mediation and due
5 process, at the end it shows the current policy is that the
6 due process hearing will be set at filing plus 55 days,
7 right? So if that hearing went, that hearing decision would
8 be due sometime about 15 days after the hearing started,
9 right? Am I doing that math right? 20 days after the
10 hearing started because it's a 75-day window for that one.

11 So what happens is, is if there's a continuance,
12 the only people that get the benefit of the extended timeline
13 is the judge writing the decision. So what happens is, is if
14 there's been a -- so what happens and what happened to my
15 client is I go to have a hearing. The district opposes the
16 dates because their district's attorney is busy for the next
17 nine months in a row. The hearing gets continued until three
18 months later under the 90-day guideline.

19 So my client is not only waited an additional 90
20 days that they didn't want to wait to a hearing. There is
21 now 90 more days that is going -- I mean, you know, whatever
22 timeline is left has -- they get like this bonus from the
23 time it was granted until the time of the initial --
24 (inaudible due to audio malfunction). My client then gets
25 decision in the same amount (inaudible due to audio

1 malfunction) otherwise what happened to me is from the
2 continuance that granted earlier for stipulated days, my
3 client has had to wait for a timely decision sometimes 45
4 days to two months after the hearing to get what's considered
5 a timely decision, and I don't think that's reasonable.

6 **MR. REZOWALLI:** So is this is a recommendation? I
7 was listening for the recommendation.

8 **ADMINISTRATIVE LAW JUDGE KOPEK:** Does everybody --

9 **MS. BROUSSARD:** So my recommendation is, is that
10 when the timelines are determined -- when there is a
11 continuance, the timeline -- when the timeline attached to a
12 case is determined -- that the timeline be extended -- or the
13 clock stop only from the date that the first hearing was
14 supposed to be --

15 **ADMINISTRATIVE LAW JUDGE KOPEK:** Okay.

16 **MS. BROUSSARD:** -- until the date the hearing
17 actually commences --

18 **ADMINISTRATIVE LAW JUDGE KOPEK:** Okay.

19 **MS. BROUSSARD:** -- not from the date the
20 continuance was granted.

21 **ADMINISTRATIVE LAW JUDGE KOPEK:** All right. Is
22 there a second? No second?

23 **UNIDENTIFIED SPEAKER:** I honestly don't understand
24 it at all or I would second it. I'm sorry.

25 (Overlapping.)

1 **UNIDENTIFIED SPEAKER:** Want me to explain it?

2 **ADMINISTRATIVE LAW JUDGE KOPEK:** No.

3 **UNIDENTIFIED SPEAKER:** Please.

4 **UNIDENTIFIED SPEAKER:** Okay.

5 **UNIDENTIFIED SPEAKER:** Sorry.

6 **ADMINISTRATIVE LAW JUDGE KOPEK:** Okay. The way --
7 okay. The way I understand it is if we follow the current
8 scheduling protocol for a student filed case, right now your
9 due process hearing is going to be 55 days after filing or 25
10 days after the end of the resolution session. So basically
11 at the time the hearing starts, 25 days have already passed
12 in terms of the decision timeframe. So the first day that
13 the hearing starts, the judge would have 20 days to write the
14 decision.

15 So what, I think, you're proposing is that if a
16 request for a continuance is granted prior to -- at any time
17 prior to the initial starting date, when the hearing finally
18 does start the judge will have 20 days to write the decision.

19 **MS. BROUSSARD:** Same as they would have had there
20 not been a continuance.

21 **ADMINISTRATIVE LAW JUDGE KOPEK:** Right.

22 **MS. BROUSSARD:** There's no affect on the date the
23 decision is due to be written just because there was a
24 continuance.

25 **ADMINISTRATIVE LAW JUDGE KOPEK:** Okay. So with

1 that explanation, is there a second or is there a need for
2 further clarification? No second? Okay.

3 **UNIDENTIFIED SPEAKER:** I'll second.

4 **MS. GRAVES:** I'll second.

5 **ADMINISTRATIVE LAW JUDGE KOPEK:** Oh, okay.

6 **MS. GRAVES:** This is Maureen. I'll second.

7 **ADMINISTRATIVE LAW JUDGE KOPEK:** Okay.

8 **MS. GRAVES:** With that -- now that I understand it.
9 I think we should talk about it.

10 **ADMINISTRATIVE LAW JUDGE KOPEK:** Okay.

11 Discussions? Ms. Gutierrez?

12 **MS. GUTIERREZ:** Can I just start the discussion
13 from asking OAH's perspective on doing that? Or I don't know
14 if you -- if this is something that the PJs have discussed
15 before.

16 **ADMINISTRATIVE LAW JUDGE KOPEK:** It's nothing --
17 since we are not proposing the change, it's not that we --
18 nothing that we've discussed.

19 The impact would be -- especially currently, since
20 we have vacancies that we have not been permitted to fill.
21 And under our current system, the judges have worked very,
22 very hard to maintain a hundred percent timeliness.

23 My concern would be that the judge, just because of
24 calendaring demands -- our cases have continued to go up. At
25 the end of last fiscal year they went up 10 percent. They,

1 frankly, are going up at the same rate so far through the
2 first two quarters -- or the first quarter. My concern would
3 be that because of the demands that we would not be able to
4 maintain a hundred percent timeliness because you just have -
5 - in terms of the way we're counting that it would just be
6 harder for the decision to be rendered in a timely fashion by
7 the way that we count them is what I'm saying.

8 But I don't -- you know, I don't know. Our judges
9 have -- in my view, have done a phenomenal job under really
10 difficult challenging circumstances, so I don't want to under
11 -- undersell them or cut them short because they take -- we
12 take our obligations very seriously, but just off the top of
13 my head that would be one of the -- the issues that I would
14 see. Yeah. So Ms. Broussard.

15 **MS. BROUSSARD:** So I would just say for -- for me,
16 I believe that that timeliness is artificial. I believe that
17 they -- saying it's on time -- I think -- I don't think the
18 calculation of the days is a correct calculation of the days.

19 So I think, actually, there's an artificially
20 inflated on-time days because my client is now waiting a much
21 longer time to have a decision rendered, which in some time
22 periods may make a real effect on a kid's education and
23 what's going on with a kid.

24 So if you've got a -- if you've got a parent that
25 wanted to have a hearing, didn't because the other side had

1 good cause for a continuance, then not only -- okay. So
2 they've got that time peer to wait. But then there's this
3 extra time period after the hearing that's kind of a built-in
4 extra time to write the decision. I don't see how that
5 benefits the district or the parent or the student.

6 I just think that that's an artifact of counting
7 days, and it's actually an artificial way -- I'm going to --
8 I don't want to use the words I'm just going to use. It may
9 artificially inflate the on-time decisions stats in a way
10 that perhaps you could get vacancies filled if you all of a
11 sudden didn't have such a great on-time record for decisions.

12 **ADMINISTRATIVE LAW JUDGE KOPEK:** Any further
13 discussion in Southern California?

14 **MR. WRIGHT:** Yes.

15 **MS. GRAVES:** Yeah. I would -- that's what I was
16 going to say too. And I think it's also artificial in the
17 sense that nobody knew about this policy that you could go
18 ahead and have your hearing on the first day.

19 And I don't know if we need a motion to get an
20 announcement of that or if, Judge Kopek, you're willing to
21 make that announcement to the field -- to the distribution
22 list, but I think that -- showing that we really do have a
23 problem meeting timelines would be hopefully helpful in
24 getting positions filled, since that seems to be one of the
25 few things that the federal government does enforce in

1 special education.

2 **ADMINISTRATIVE LAW JUDGE KOPEK:** I certainly heard
3 that -- it wasn't "an official recommendation," but I
4 certainly was aware of the need to communicate that policy
5 throughout. So I'll certainly do it -- you know, the idea of
6 putting something on the website, I think, seems like a good
7 idea or sending it out on the ListServe.

8 So my further -- just any discussion from the
9 public on this item in Northern California? How about
10 Southern California?

11 **MR. WRIGHT:** No. They had to leave.

12 **ADMINISTRATIVE LAW JUDGE KOPEK:** Nothing. Okay.

13 **UNIDENTIFIED SPEAKER:** So if we suggest this
14 recommendation, if we take a vote on it right now and it
15 passes and we suggest this recommendation, what would the
16 process be? Is it taking it back to your PJs and actually
17 getting input from them --

18 **ADMINISTRATIVE LAW JUDGE KOPEK:** Okay.

19 **UNIDENTIFIED SPEAKER:** -- (inaudible) make a
20 change?

21 **ADMINISTRATIVE LAW JUDGE KOPEK:** What would happen
22 is as all the recommendations are made -- and again, I
23 apologize because I think this is a piece of the procedure
24 that I forgot to mention at the beginning.

25 What happens at the end of this meeting -- all the

1 recommendations that have passed, OAH will then prepare a
2 written response, and you all received a copy of the written
3 response from the meet -- the recommendations of last
4 meeting. So OAH will then -- will respond as to whether we
5 accept the recommendation or accept part of it or that we do
6 not accept the recommendation.

7 **UNIDENTIFIED SPEAKER:** Okay.

8 **ADMINISTRATIVE LAW JUDGE KOPEK:** So if we do accept
9 the recommendation, we go ahead and implement it.

10 **UNIDENTIFIED SPEAKER:** Okay.

11 **ADMINISTRATIVE LAW JUDGE KOPEK:** So that's what
12 would happen here as well.

13 **UNIDENTIFIED SPEAKER:** Okay.

14 **ADMINISTRATIVE LAW JUDGE KOPEK:** All right. Any
15 further comment? Let's go ahead and take a vote. In
16 Northern California, all those in favor, please raise your
17 hand. And we have Ms. Bean, Mr. Rezowalli, Ms. Gutierrez,
18 Ms. Leavitt, Ms. Broussard, Ms. Sherman and Ms. English. It
19 was unanimous.

20 And in Southern California? Anyone opposed?
21 Nobody has abstained.

22 And in Southern California, all those in favor?
23 Mr. Wright, can you --

24 **MR. WRIGHT:** We have Maureen Graves and Amy Foody.

25 **ADMINISTRATIVE LAW JUDGE KOPEK:** And those opposed?

1 **MR. WRIGHT:** None.

2 **ADMINISTRATIVE LAW JUDGE KOPEK:** No one is -- and
3 abstaining?

4 **MR. WRIGHT:** Margaret Dalton, Miho Murai and Bob
5 Wright.

6 **ADMINISTRATIVE LAW JUDGE KOPEK:** Okay. So it looks
7 as though it passed in Northern California and did not pass
8 in Southern California. Okay.

9 Next item, OAH calendar conflicts and good cause
10 for continuances. This is an -- an item that is one of those
11 -- how should I put it? I guess it -- policies -- to say
12 that this is an OAH policy, I think, would be a little bit
13 too strong because I'm not sure that it was ever
14 communicated. It's certainly an idea that the -- the PJs
15 have discussed and I wanted to get the Advisory Committee's
16 view on.

17 And the situation is this. We know -- because we
18 know what our calendar looks like and how many cases we have
19 set on a given day and we know that for all the parties, the
20 representatives, you have multiple cases in your calendar.
21 When you look at it on any given day, it probably gives you
22 heart burn like it does when I look at the calendar, if I
23 look more than at the current week.

24 So the -- the policy I'm -- I'm proposing -- I
25 guess is the best way to put it -- is basically the idea that

1 whichever hearing goes first is going to take precedence.
2 And what that means, in essence, is that if an attorney has
3 hearing number one, which is scheduled from -- and I'm just
4 making up dates -- November 1 to November 4th. And the same
5 hearing has -- the same attorney has hearing number two
6 scheduled from November 2nd to November 4th.

7 That if hearing number one goes forward on November
8 1st that basically that hearing is going to go forward. So
9 that when a request for continuance on hearing number two is
10 submitted -- now, here I know I have to be a lawyer because,
11 of course, all requests for continuances are up to discretion
12 and good cause, so I can't say that a request for continuance
13 would always be granted.

14 I find it hard to believe that we would ever deny
15 that because you're clearly unavailable for hearing number
16 two because you're sitting in front of our judges in hearing
17 number one.

18 And so because one of the issues that we come
19 across, and I know that you come across, is that because we
20 require you to agree on dates, you all are looking at your
21 calendar -- and since we know what our scheduling orders say,
22 since you can tell by looking at your protocols -- you know,
23 if five things are filed on one day, you're going to have
24 five things going do hearing and mediation, etcetera, on the
25 same day further down the line.

1 And so the idea is that -- so basically, the first
2 hearing that gets started is going to take precedence. And I
3 have suggested this a couple times in status conferences, and
4 I know it makes people nervous because, you know, is there
5 really -- I can't guarantee you that the second hearing would
6 be continued, but I can't even imagine -- let me put it this
7 way. If I -- unless the circumstances were extraordinary, I
8 would certainly have a long hard discussion with the PJ that
9 denied a continuance on hearing number two even though
10 hearing number one is going forward.

11 So with that, I'd like to hear -- hear your
12 discussions on what you think about that policy in terms of
13 what impact it would have on your calendar, if it gives you
14 any certainty or whether you feel it would make things worse.

15 **MS. BROUSSARD:** I have a question.

16 **ADMINISTRATIVE LAW JUDGE KOPEK:** Ms. Broussard.

17 **MS. BROUSSARD:** So if I'm not attorney with the
18 conflict -- so let's say Marcy has a hearing on the first and
19 the third, right, and the first is going, she thinks. I'm
20 the attorney -- I'm the opposing counsel on the one that
21 starts on the third. How in the heck would I ever know until
22 Marcy's first day of hearing one that my hearing on the third
23 isn't going to go?

24 **ADMINISTRATIVE LAW JUDGE KOPEK:** Well, that is the
25 dilemma.

1 **MS. BROUSSARD:** Okay. It does seem to me to be a
2 dilemma because now I've got witnesses scheduled. Now I've
3 got stuff going on, and I wouldn't find out until -- I don't
4 know when is she'd call me.

5 **MS. GUTIERREZ:** I'd call you.

6 **MS. BROUSSARD:** (Inaudible) hearing. But I mean --

7 **ADMINISTRATIVE LAW JUDGE KOPEK:** I'll tell you
8 what, it is -- it's just the dilemma, and you know, we are
9 pulling our hair out really trying to come up with ways
10 structurally to help us and to help you, frankly, with the
11 scheduling dilemma presented by the way -- you know, the
12 timeframes because I know that people have requested
13 continuances prior to hearings starting because they're
14 double booked.

15 And I know that depending upon the circumstances,
16 some of those continuances have been denied. Why? Because
17 what is the certainty or likelihood that hearing number one
18 is really going to go forward? When you look at the
19 statistics and you know that, what, 97 percent of the cases
20 don't go to hearing? So that's the dilemma.

21 You know, obviously, in terms of the request for a
22 continuance on hearing number two, the closer it gets to
23 hearing number one, and whatever assurances the parties can
24 provide as to the likelihood of one going, then those would
25 be the circumstances for good cause, you know.

1 **MR. WRIGHT:** Are you ready for discussion?

2 **ADMINISTRATIVE LAW JUDGE KOPEK:** I was responding
3 to Ms. Broussard's question. Does that help?

4 **MS. BROUSSARD:** Yes.

5 **ADMINISTRATIVE LAW JUDGE KOPEK:** Okay. Mr. Wright.

6 **MR. WRIGHT:** Yes, please. We have Miho and
7 Maureen. Miho, I guess, first.

8 **MS. MURAI:** And again, I think that if we had -- if
9 somebody had requested a five-day hearing and the five-day
10 hearing was calendared, I don't think that would happen. I
11 mean, I really -- I think that that's the problem. I think
12 we need to schedule the dates and, you know, and then -- if
13 you scheduled the date for a five-day hearing, then you won't
14 be -- you'll be booked, so that second hearing -- you won't
15 have that dilemma.

16 **ADMINISTRATIVE LAW JUDGE KOPEK:** What -- do you
17 have a comment on this proposal?

18 **MS. MURAI:** That's my comment that -- again, I'm
19 going back to the same thing. I'm recommending that -- you
20 know, and I think it's related. And it seems to me that
21 every time I recommend it, it's not somehow related, but I do
22 think it's related.

23 That if -- you know, if a party is requesting a
24 five-day hearing, five days are reserved on the scheduling
25 order for the hearing straight from the beginning, you know.

1 That's my recommendation, and I don't know if anybody will
2 second it but --

3 **MR. WRIGHT:** I'll second it, but Maureen has a
4 comment.

5 **MS. GRAVES:** Well --

6 **ADMINISTRATIVE LAW JUDGE KOPEK:** Okay. Wait a
7 minute. There's a recommendation that has been seconded, so
8 the comments now need to relate to the recommendation.

9 **UNIDENTIFIED SPEAKER:** I don't know what the
10 recommendation is.

11 **MR. WRIGHT:** Then, I'm sorry. I apologize for my
12 Robert's Rules of Order. I think we ought to finish the
13 discussion before we second the motion. I'm going to retract
14 my second until discussion is completed.

15 **ADMINISTRATIVE LAW JUDGE KOPEK:** Okay. Who would
16 like -- who's the next person who would like to comment?

17 **MR. WRIGHT:** I will.

18 **ADMINISTRATIVE LAW JUDGE KOPEK:** Anyone else?

19 **MR. WRIGHT:** This is Bob Wright. It sounds like
20 the OAH is triple, quadruple booking these cases and putting,
21 you know -- when the attorney in Northern California was
22 giving the example "I'm not going to find out until day
23 number one of trial number one that that attorney is in
24 trial," that's assuming that you're both in the same room at
25 the same place.

1 These hearings, you know, it's -- how likely is
2 that? I think it's unrealistic, and there's been a solution
3 that sounded reasonable, but there's no -- maybe we'll get
4 discussion on that later.

5 But Maureen is next for comment.

6 **MS. GRAVES:** Okay. Let's see. Two things. One is
7 that I don't think there should be a mechanical, whichever
8 the first one is necessarily goes first because sometimes
9 there's a very good reason why no one would be prejudiced by
10 putting off the first one like nobody has coordinated any
11 witnesses with. It's reimbursement. The child's education
12 is not at stake; whereas, the second one involves, you know,
13 a child who has been out of school for three months.

14 So I would rather have it be good cause and have
15 the people be able to do motions previously based on good
16 cause, rather than having a mechanical the first one goes
17 rule.

18 The second thing I was wondering -- and I'm really
19 torn about this start and keep going versus schedule a fixed
20 number of days, which would certainly make life easier in
21 many ways. But is there a way that the OAH website could
22 allow us to look up other lawyers' calendars so that when
23 we're on a hearing it's -- so you can look up Dan Harbottle
24 and find out what he's doing, which I realize people might
25 not be too thrilled about that but -- so that you know if

1 you're about to get stuck with something like that? Maybe
2 not know everybody's mediations, but at least know when
3 people are scheduled for hearing so you know you might get
4 caught in that situation.

5 **MR. WRIGHT:** Amy Foody.

6 **MS. FOODY:** My only comment is there any way that
7 OAH can look at the school district because often what
8 happens is the -- because the school district is a given, and
9 it's not always the attorney. A director can't be in 12
10 places at once either or a school district representative.
11 And sometimes we get multiple filings at the same district at
12 the same time certain times of the year.

13 Is there any way that OAH could possibly help in
14 this situation by scheduling -- not scheduling school
15 districts on top of each other for hearings in mediation. I
16 don't know if that would -- would work or is even an option,
17 because we can't control attorney -- you don't know which
18 attorney is assigned where, but we do know which school
19 district is involved.

20 **MR. WRIGHT:** Miho.

21 **MS. MURAI:** My only comment with that is that
22 usually there are a number of witnesses for the school
23 districts. And I mean, dealing mainly with LAUSD, there are
24 notoriously in a lot of due processes, and I'm afraid that it
25 will just be more delayed and delayed because there's always

1 going to be con -- you know what I mean? Because I think --
2 I don't know. I think that's my only concern because I see -
3 - yes, you know, I agree, you know, the special ed director
4 can't be in two places at once, but at the same time, I mean
5 -- I don't know. Yeah. I don't know. It's --

6 **MS. FOODY:** I think LAUSD is an anomaly though.

7 **MR. WRIGHT:** Amy, again. Would you --

8 **MS. FOODY:** Sorry.

9 **ADMINISTRATIVE LAW JUDGE KOPEK:** Anybody? Okay.
10 Ms. Broussard?

11 **MS. BROUSSARD:** I think, as I'm thinking about
12 this, my trouble with it is kind of deadline related. At
13 some point I think somebody has to pull the trigger on their
14 best guess a hearing is going to go, whether that's at the
15 prehearing conference stage. At some point it's pretty
16 clear.

17 What I was worried about in my earlier comment is
18 kind of a feeling that the other side got to kind of have in
19 their back pocket that they were going to get this
20 continuance because only they know their real trial schedule.
21 So they could really make the other side incur costs -- I
22 mean, I'm trying to think of this from both sides -- knowing
23 that they have in their hip pocket, well, I've got two cases
24 scheduled that week so I know this one is going to end up
25 continuing.

1 So it seems to me that this might need further
2 discussion and kind of some subcommittees to see if like some
3 stuff could be worked out. But for me, knowing that -- I
4 just would want to discuss whether there'd be a date by which
5 you needed to ask for that continuance, whether it be five
6 days before or whatever.

7 And even though it might cancel after that, you
8 can't force opposing counsel that has that second hearing to
9 go forward with the hearing in two days' notice or to cancel.
10 I mean, at some point somebody is going to have to drop dead
11 and say this hearing is happening in X number of days.

12 So I'm just wondering -- I guess I'd like to
13 propose that maybe -- and I don't know whether we kind of
14 having a working group piece or what we could do -- but I
15 think this needs like way more discussion of the implications
16 that we can do in this small amount of time we have.

17 **ADMINISTRATIVE LAW JUDGE KOPEK:** Anything else in
18 Sacramento?

19 **MR. REZOWALLI:** I just -- I think that --

20 **ADMINISTRATIVE LAW JUDGE KOPEK:** Mr. Rezowalli?

21 **MR. REZOWALLI:** -- (inaudible) allow the
22 flexibility as opposed saying automatically one or the other
23 gets continued. I think allow for some flexibility and the
24 discussion with the parties because you know, you may be
25 sitting there thinking well, there's a 90 percent chance that

1 I'll resolve this, but I want to keep it on calendar
2 (inaudible). You know, in a certain amount of time is it a
3 go or not a go, both parties, first and second. I think that
4 might be helpful.

5 I don't -- we're five minutes over and we have more
6 agenda items -- but do you really think -- are you suggesting
7 that there be a subcommittee formed -- subcommittee to
8 discuss it? I don't know if there's --

9 **MS. BROUSSARD:** Yes.

10 **ADMINISTRATIVE LAW JUDGE KOPEK:** Okay. Well, let's
11 take -- let's deal with the proposal. If you want to make a
12 recommendation, you can do that now because I think I heard
13 other recommendations as well that we might come back to.

14 Any further discussion from members on the OAH
15 proposal? Any discussion from the public in Sacramento? How
16 about from LA? No?

17 **MR. WRIGHT:** I have just one -- I thought it was
18 Ms. Broussard's proposal. Is it OAH's now?

19 **MS. BROUSSARD:** It's not mine.

20 **MR. WRIGHT:** Oh.

21 **ADMINISTRATIVE LAW JUDGE KOPEK:** No. What I'd like
22 -- what I'd like to do is go ahead and take a vote on OAH's
23 proposal. Then I believe there was a possible recommendation
24 in Southern California and a possible recommendation in
25 Northern California, and we can take up each of those after

1 we do this vote. Okay.

2 So let's vote starting in LA. Those in favor of
3 the -- of OAH's proposal that -- basically that the -- if
4 there are -- first hearing that goes takes precedence in
5 terms of any later calendar conflicts for either of the
6 parties.

7 Those in favor? None. Those opposed? And I take
8 it --

9 **MR. WRIGHT:** That's Bob Wright, Maureen Graves and
10 Miho Murai.

11 **ADMINISTRATIVE LAW JUDGE KOPEK:** I'm sorry. And
12 abstaining?

13 **MR. WRIGHT:** Barbara Dalton and Amy Foody.

14 **ADMINISTRATIVE LAW JUDGE KOPEK:** And in Sacramento,
15 those in favor? Ms. Gutierrez. Those opposed? We have
16 Rezowalli and Sherman. And those abstaining? We have Bean,
17 Leavitt, Broussard and English. Okay.

18 I believe, Ms. Murai, there was a recommendation?

19 **MR. WRIGHT:** Miho.

20 **MS. MURAI:** It was the recommendation about the --
21 basically whenever -- if a certain number of days is
22 requested for a hearing, that that number of days is reserved
23 for the hearing on the scheduling order. Whoever is the one
24 that's filed. So if a student files and requests six days,
25 then six is reserved.

1 And then at a -- you know, the district can file a
2 motion saying that five days isn't necessary, or whatever, or
3 that can be discussed at a prehearing conference or what-not,
4 but at least those numbers of days are set in stone.

5 **UNIDENTIFIED SPEAKER:** If I could just say as a
6 point of order that that's not one of our agenda items. I
7 took your job on.

8 **MR. REZOWALLI:** No. That's okay.

9 **ADMINISTRATIVE LAW JUDGE KOPEK:** I understand that.
10 I'm going to allow it at this time. So the recommendation
11 would be that when a complaint is filed, the filing party can
12 request a specific number of days for hearing and that OAH
13 will schedule that number of days; is that correct?

14 **MS. MURAI:** That's correct.

15 **ADMINISTRATIVE LAW JUDGE KOPEK:** And is there a
16 second?

17 **MS. GRAVES:** Second.

18 **MR. WRIGHT:** Yes. Maureen Graves has seconded
19 that.

20 **ADMINISTRATIVE LAW JUDGE KOPEK:** Okay. Discussion?
21 Southern California?

22 **MR. WRIGHT:** A question. If the first person
23 that files asks for a hundred days and they only need three
24 based on, you know -- if a parent doesn't know, is there some
25 guidance provided that -- that, you know, if it's -- a number

1 of days is ridiculous on either too long or too short -- and
2 I just -- I don't know. It just seems like, you know, the
3 first person that asks gets the number of days they want, no
4 matter how many are needed seems -- but I -- that's a
5 question. But I don't have the experience to be an expert to
6 make a decision on this topic, so I'll -- I'm not -- thank
7 you. That was just a comment.

8 **ADMINISTRATIVE LAW JUDGE KOPEK:** Anything else in
9 Southern California?

10 **MS. GRAVES:** No. I think the idea the parties
11 could make a -- the other side can make a motion saying this
12 is ridiculous or the parties could agree at mediation that
13 really they didn't need all hundred days.

14 **MR. WRIGHT:** Yeah. Smart.

15 **ADMINISTRATIVE LAW JUDGE KOPEK:** Anything further
16 from the members in Southern California? How about Northern
17 California? Okay. Any public comment in Northern
18 California? And I take it there's no more public members in
19 southern -- I mean public --

20 **MR. WRIGHT:** That's correct.

21 **ADMINISTRATIVE LAW JUDGE KOPEK:** -- observers in
22 Southern California; is that correct?

23 **MR. WRIGHT:** Yes, it is, Judge.

24 **ADMINISTRATIVE LAW JUDGE KOPEK:** All right. Let's
25 go ahead and take a vote. In Southern California, those in

1 favor?

2 **MR. WRIGHT:** It's unanimous. Margaret Dalton,
3 Maureen Graves, Miho Murai, Amy Foody and Bob Wright.

4 **ADMINISTRATIVE LAW JUDGE KOPEK:** Okay. So no
5 opposed, no abstentions. And in Northern California, in
6 favor? We have English and Sherman. Opposed? We have
7 Gutierrez and Broussard. And abstain? Bean, Rezowalli and
8 Leavitt. Okay.

9 Moving on, paperless pilot. I just wanted to let
10 you know that in an effort to streamline things and be more
11 efficient and save costs, the Special Education Division for
12 the most part has pretty much gone paperless, in that
13 everything that we have is scanned into our Practice Manager
14 System, but we do, in fact, create a paper file in every
15 case.

16 And settlement documents, confidential settlement
17 documents, mediation documents, for the most part, other than
18 the initial scheduling order if a file -- if the paper file
19 has anything, it's the confidential mediation and settlement
20 documents.

21 And we are going to try a six-month pilot project
22 so that we are not going to create a paper file until a case
23 goes to hearing because we then have the administrative
24 record, so we will actually have something to put in the
25 file.

1 And what we are doing for any confidential
2 documents or anything of that nature, we are protecting them,
3 securing them in Practice Manager so that the access will be
4 limited if -- for example, confidential mediation and
5 settlement documents, the judges would not have access to
6 that.

7 So I just wanted to let you all know. I don't know
8 whether it would have any effect in you and your practice,
9 but I just thought that it was something that you should be
10 aware of.

11 Any comments, questions?

12 **MR. WRIGHT:** Southern California. Maureen.

13 **MS. GRAVES:** It's not really a comment on this, but
14 Margaret Dalton has to leave in a minute, so we're about to
15 lose our quorum --

16 **MS. DALTON:** Yeah. I have a conflict. I'm sorry.

17 **MS. GRAVES:** -- so if there's anything that needs a
18 vote or you feel you need a quorum for, you might want to --

19 **MS. DALTON:** I'm sorry. I didn't realize we'd run
20 over, and I have a conflict I can't change so --

21 **ADMINISTRATIVE LAW JUDGE KOPEK:** Okay. So we
22 cannot then do -- I will put item G, timely preemptory
23 challenges, off to the next meeting.

24 **MS. DALTON:** Thanks, Maureen.

25 **ADMINISTRATIVE LAW JUDGE KOPEK:** Is there any

1 public comment?

2 **MS. GRAVES:** Can you tell us what the policy is
3 currently on that?

4 **ADMINISTRATIVE LAW JUDGE KOPEK:** Well, Section 1040
5 -- well, Ms. Dalton, do you need -- Ms. Dalton is leaving.
6 We need to stop the meeting so --

7 **MS. DALTON:** I have five minutes.

8 **ADMINISTRATIVE LAW JUDGE KOPEK:** Okay. The current
9 -- Section 1034, Title 1 of the California Code of
10 Regulations governs preemptory challenges for all hearings
11 conducted by the Office of Administrative Hearings.

12 It provides that there's no preemptory challenge
13 after a hearing begins. And since all special ed matters
14 have a prehearing conference, the section pertaining provides
15 that if there is a scheduled prehearing conference and an ALJ
16 has been assigned to the hearing, any challenge to the
17 assigned ALJ has to be done at the beginning of the
18 prehearing conference.

19 In addition, in the memorandum of understanding
20 that OAH entered into beginning the 11/12 school year, the
21 current MOU, there is a provision that allows that if OAH
22 reassigns the hearing to another ALJ for a reason other than
23 granting of preemptory, that the preemptory challenge shall
24 be made no later than noon the business day prior to the
25 first scheduled day of hearing.

1 And this comes in play when the prehearing
2 conference is conducted. No preemptory challenge is made of
3 that judge. And because of business need and our calendaring
4 needs, we have to reassign a new judge. And our practice is
5 that we give notice to the parties as soon as possible that
6 the new judge will be hearing the case.

7 And so the policy is that a preemptory challenge of
8 that new judge should be made no later than noon the business
9 day prior to the hearing.

10 So members wish to discuss this at this time?

11 **MS. MURAI:** Could we just table that discussion for
12 next time --

13 **ADMINISTRATIVE LAW JUDGE KOPEK:** Okay.

14 **MS. MURAI:** -- since we have (inaudible).

15 **ADMINISTRATIVE LAW JUDGE KOPEK:** All right. We'll
16 go ahead and I'll bring that up at the next agenda item.

17 Public comment from Northern California? No public
18 comment in Southern California?

19 **MR. WRIGHT:** Oh, just -- I have -- if it's -- if
20 we're done with the agenda and it's now that -- the bottom,
21 just one comment that -- that -- with the number of members
22 that are attending today and the number of parents that are
23 on this Committee -- both Northern and Southern California --
24 that can we come up with a way to try and help get more
25 members on the Committee so we have quorums and more parents

1 that are supposed to be the majority of the group?

2 And that's a comment. I tried to recruit some
3 parents after the last meeting, but evidently none of them
4 got applied or got approve or whatever, so obviously, a
5 concern that there's not enough concerned members here.

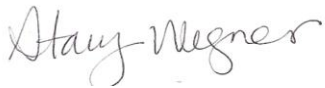
6 **ADMINISTRATIVE LAW JUDGE KOPEK:** Any other public
7 comment? All right.

8 Date of next Advisory Committee meeting. I'm
9 proposing that the next meeting be held on Friday, April
10 12th, 2012. And with that, we will adjourn the meeting.
11 Thank you all very much. I appreciate your participation and
12 attendance. Thank you.

13 (Thereupon, the meeting
14 was adjourned.)
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CERTIFICATE OF TRANSCRIPT

This is to certify that I, Stacy Wegner, transcribed the tape-recorded public meeting of the Special Education Advisory Committee dated October 14, 2011; that the pages numbered 1 through 133 constitute said transcript; that the same is a complete and accurate transcription of the aforesaid to the best of my ability.



Stacy Wegner
December 5, 2011
Statewide Transcription Services
(916) 624-4300